

# **The Role of the National Guard in Homeland Security**

**A Monograph  
by  
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ARNG**



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# **SCHOOL OF ADVANCED MILITARY STUDIES**

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## **Abstract**

THE ROLE OF THE NATIONAL GUARD IN HOMELAND SECURITY by MAJ Gregory O. Bodge, ARNG, 79 pages.

The purpose of this monograph is to determine what role the National Guard should perform in homeland security. The establishment of the Department of Homeland Security and the United States Northern Command has created new organizations to assist in homeland security, but neither has fully integrated the National Guard into its planning or fully assessed its capabilities.

This topic is particularly pertinent after the attacks on 11 September 2001, and the aftermath of Hurricane Katrina. Both events exposed flaws in the planning and execution in the use of the National Guard for homeland operations. While organizational and legal changes have been made at the federal and state levels, there are still questions as to the role of the National Guard in homeland security.

This monograph will evaluate the National Guard's possible integration in the context of the Department of Defense's contribution to homeland security: military missions overseas, homeland defense, and support to civil authorities. The evaluation will include the National Guard's unique legal capabilities in the military, its organization and relationship to the local populace, and its historical use in homeland security and as a reserve component of the military.

The conclusion is that the National Guard's history, legal capabilities, and inherent ties with the local and state communities and government poise the National Guard to be the country's primary homeland security force. In order to enhance its capabilities, the National Guard Bureau must be integrated into both the United States Northern Command and the Department of Homeland Security and planning considerations must be discussed with governors and state National Guard officials, unity of command and unity of effort must be deconflicted during homeland operations, and mobilized National Guard units operating within the United States must not be federalized in order to ensure that it can still perform law enforcement operations while mobilized.

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## INTRODUCTION

### Importance

With the increase in threats to national security in the United States after the 11 September attacks, there have been significant changes in the structure of the federal and state governments and in their concept of homeland security. America is no longer threatened only by existing nation states, but also by a difficult to define and ambiguous enemy with the ability to infiltrate borders; exploit societal norms to his advantage, and attack infrastructure and citizens with little or no warning. Today's terrorists can strike at any place, at any time, and with virtually any weapon.<sup>1</sup> These changes in the nature of the enemy and new requirements have called for a re-evaluation of the military's role in homeland security as a whole, and, in particular, the role of the National Guard.

Homeland security has become the United States government's most important mission.<sup>2</sup> While this might seem a basic concept, there are continuing debates as to what exactly that means, who it involves, and how it should be done. With the establishment of the Department of Homeland Security (DHS) and the incorporation of organizations from the Departments of Justice, Transportation, and other organizations into it, there has been a shift in responsibility for homeland security. DHS is now responsible for missions and tasks historically assigned to other cabinet level organizations. This organizational change created some confusion among organizations as to roles and responsibilities. According to current doctrine and strategies, there are specific roles for the Department of Defense in homeland security. The Department of Defense's mission then becomes determining what tasks support homeland security and which military organizations should be responsible for these specific tasks. The difficulty of making

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<sup>1</sup>Office of Homeland Security, *National Strategy for Homeland Security* (Washington, DC: Government Printing Office, 2002), 1.

<sup>2</sup>Ibid.

these determinations is compounded by the fact that the United States is now a nation at war, requiring combat troops in Iraq and Afghanistan, along with its commitments to United Nations (UN) and North Atlantic Treaty Organization (NATO) missions. Under the Total Force Policy, the United States can not mount and sustain a significant military operation without the National Guard and the Army Reserve.<sup>3</sup> These circumstances require that the Department of Defense must determine how to use its limited resources to support both operations abroad and homeland security. Given the Department of Defense's requirements to perform specific missions with limited resources, and the historically unique legal, organizational, and structure of the National Guard, there should be specific roles assigned to the National Guard in homeland security at the federal, state, and local level.

## Background

While homeland security has always been a concern throughout the United States history, it was not recently studied until the late 1990s. In 1999, when homeland security was emerging as an issue of concern, the RAND Corporation was contracted to study the role of the United States Army in homeland security.<sup>4</sup> Also in 1999, the Department of Defense conducted a comprehensive study on reserve component employment, which included how the reserve component could support homeland defense.<sup>5</sup> After the attacks on 11 September 2001, interest in homeland security dramatically increased. A new National Strategy for Homeland Security was developed and the numbers of publications, studies, and documents focusing on homeland security proliferated. These include the *National Response Plan*, several homeland security presidential directives on topics such as immigration, weapons of mass destruction, domestic

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<sup>3</sup>Bennie J. Wilson, ed., *The Guard and Reserve in the Total Force: The First Decade, 1973-1983*, (Washington, DC: National Defense University Press, 1985), 47.

<sup>4</sup>Eric V. Larson and John E. Peters, *Preparing the U.S. Army for Homeland Security: Concepts, Issues, and Options* (Santa Monica, CA: RAND Corporation, 2001), iii.

<sup>5</sup>US Department of Defense, *Reserve Component Employment Study 2005* (Washington, DC: Government Printing Office, 1999), 1.

incidents, national preparedness, agriculture and food, biodefense, and ballistic missile defense, the National Security Strategy and national strategies on homeland security, physical protection of critical infrastructure, combating terrorism, and presidential decision directives covering counternarcotics, counterterrorism, terrorism, and the continuity of government operations. While these publications are important in outlining the strategy and requirements for homeland security, it is not clear how they apply to the National Guard. Clarifying the role of the National Guard in the new homeland security environment is the subject of this monograph.

## **Existing Government Publications**

Current doctrine and strategy available to the National Guard has been published in the form of strategic documents from the President, the Secretary of Defense, the Joint Chiefs of Staff, and the Department of the Army. These documents range from broad applicability to the National Guard to guidance to the total Army.

The capstone document, the *National Security Strategy (NSS)*, was published by the President in 2002 and provides a broad perspective of how the United States will ensure its security. The *NSS* defines America's goals as political and economic freedom, peaceful relations with other states, and respect for human dignity. These goals will be achieved by the United States by championing aspirations for human dignity, strengthening alliances to defeat global terrorism, and working to prevent attacks against the United States and its friends by working with others to defuse regional conflicts. The United States will work to prevent its enemies from threatening it, its allies, and its friends with weapons of mass destruction. This will ignite a new era of global economic growth through free markets and free trade; expanding the circle of development by encouraging opening societies and building the infrastructure of democracy, developing agendas for cooperative action with other main centers of global power, and transforming America's national security institutions to meet the challenges and opportunities of



the twenty-first century.<sup>6</sup> These goals and ways of achieving them are tied to all the elements of national power, not to specific military options which support them.

Other national strategies which derive from the *NSS* and are applicable to homeland security are the *National Strategy for Combating Terrorism (NSCT)* and the *National Strategy for Homeland Security (NSHS)*. The intent of the *NSCT* is to stop terrorist attacks against the United States, its citizens, its interests, and its friends and allies around the world. This will ultimately create an international environment inhospitable to terrorists and those who support them.<sup>7</sup> The *NSCT* goals are defeating terrorist organizations that have a global reach, denying them further sponsorship, support, and sanctuary, diminishing the underlying conditions that terrorists seek to exploit, thereby defending the United States, its citizens, and interests at home and abroad.<sup>8</sup> The *NSCT* specifically establishes the goal of defending the United States, its citizens, and interests at home. The objectives tied to the goal do not give specific responsibilities to the Department of Defense. These goals are tasks which could be directly supported by the National Guard. The *NSHS* establishes the strategic objectives of preventing terrorist attacks within the United States, reducing America's vulnerability to terrorism, minimizing any damage, and recovering from attacks that occur.<sup>9</sup> It also establishes the critical mission areas of intelligence and warning, border and transportation security, domestic counterterrorism, protecting critical infrastructure, defending against catastrophic terrorism, and emergency preparedness response.<sup>10</sup>

The Office of the Secretary of Defense is responsible for three pertinent documents, the *National Defense Strategy (NDS)*, the *Quadrennial Defense Review Report (QDR)*, and the *Strategy for Homeland Defense and Civil Support*. The *NDS* outlines an active, layered approach

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<sup>6</sup>The Whitehouse, *The National Security Strategy of the United States of America* (Washington, DC: Government Printing Office, 2002), 1-2.

<sup>7</sup>The Whitehouse, *National Strategy for Combating Terrorism* (Washington, DC: Government Printing Office, 2003), 11.

<sup>8</sup>*Ibid.*, 11-12.

<sup>9</sup>Office of Homeland Security, vii.

<sup>10</sup>*Ibid.*, viii.

to the defense of the nation and its interests which seeks to create conditions conducive to respect for the sovereignty of nations and a secure international order favorable to freedom, democracy and economic opportunity which promotes close cooperation with others around the world who are committed to these goals by addressing mature and emerging threats.<sup>11</sup> The *NDS* states that the Department of Defense contributes to protecting the homeland by sustaining the offensive against terrorist organizations by conducting military missions overseas, sharing intelligence, conducting air and maritime defense operations, providing support to civil authorities as directed, and ensuring the continuity of government.<sup>12</sup> While these strategies and methods broadly include the military, there are no specifics for the any specific military branch or the National Guard. The *QDR* represents a snapshot in time of the Department of Defense's strategy for defense of the nation and the capabilities needed to effectively execute that defense.<sup>13</sup> Regarding the National Guard and homeland security, the *QDR* describes the fifty-five weapons of mass destruction civil support teams (WMD CSTs) which can provide critical communications links, quick assessment of damage from any WMD attack and consequence management support to local, state and federal agencies. It also mentions the twelve Enhanced Response Force Packages that respond to chemical, biological, radiological, nuclear and high-yield explosive attacks and provide capabilities to locate and extract victims from a WMD-contaminated environment, conduct casualty and patient decontamination, and provide medical treatment. The National Guard State Area Commands (STARCs) have been transformed into a Joint Force Headquarters in each state. This will improve command and control functions for emergencies and major public events.<sup>14</sup>

The Joint Chiefs of Staff have published three documents relevant to homeland security, *The National Military Strategy of the United States of America: A Strategy for Today; A Vision*

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<sup>11</sup>Office of the Secretary of Defense, *The National Defense Strategy of the United States of America* (Washington, DC: Government Printing Office, 2005), iv.

<sup>12</sup>*Ibid.*, 8-9.

<sup>13</sup>Office of the Secretary of Defense, *Quadrennial Defense Review Report* (Washington, DC: Government Printing Office, 2006), ix.

<sup>14</sup>*Ibid.*, 16.

*for Tomorrow, The National Military Strategy to Combat Weapons of Mass Destruction*, and Joint Publication 3-26, *Homeland Security*. While these documents provide broad guidance, there is no specific guidance to the National Guard. The Army and Air Force have yet to take this broad guidance and derive specific guidance for the National Guard. This has limited the National Guard's ability to plan, train, and organize for specific missions.

## **Conclusion**

While homeland security has been important historically, the attacks on 11 September 2001, brought to light the vulnerability of the United States to large scale terrorist attacks. In order to decrease this vulnerability, a myriad of strategies, studies, and publications were generated. While these documents gave broad guidance, they have been mutually supportive and have not clearly defined the role of the National Guard in homeland security.

## CHAPTER TWO

### HOMELAND SECURITY

The world changed on September 11, 2001. We learned that a threat that gathers on the other side of the earth can strike our own cities and kill our own citizens. It's an important lesson; one we can never forget. Oceans no longer protect America from the dangers of this world. We're protected by daily vigilance at home. And we will be protected by resolute and decisive action against threats around the world.

President George W. Bush

#### Historical Perspective

Homeland security has been a responsibility of the United States government since the founding of the country. The first elements of what became the National Guard were formed from citizens who would respond to incursions into their communities by invaders. Reliance on the militia was strengthened by the prevailing political philosophy after the Revolutionary War which placed limits on a standing Army and on America's role in foreign wars. Homeland security started and ended at the border of the United States.

With the limited military resources available to the United States government, early America had to strike a delicate balance between Britain, with its strong Navy and territories in Canada, France, who held the territory across the Mississippi River, and Spain, who occupied Florida. In the midst of the international struggle for survival, Americans were also contending with irregular Indian forces who opposed the incursion into their territories. The strategy pursued by the American government consisted of a policy of neutrality toward Great Britain and France, the purchase of the Louisiana Territory from and the Embargo Act., which prohibited American ships from landing at foreign ports without the permission of the President.<sup>15</sup> The War of 1812 indicated that these strategies were not sufficient to protect the homeland, as demonstrated by the burning of the Capitol and White House by British troops.

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<sup>15</sup>John Lewis Gaddis, *Surprise, Security, and the American Experience* (Cambridge, MA: Harvard University Press, 2004), 14.

After the War of 1812, a new policy was developed by President Adams that consisted of three points; preemption, unilateralism, and hegemony.<sup>16</sup> This policy is the basis for arguments that the United States moved to expansionism as a means to attain security. Preemption was used to defend the borders from states and territories that harbored groups attacking into the United States and evolved into the actual occupation of border territories which might later become a threat to the United States. Unilateralism was based on the idea that the United States could not rely on the goodwill of others to secure its own safety, and therefore should be prepared to act on its own.<sup>17</sup> This was expanded by the Monroe Doctrine of 1823. The doctrine held three points: the first committed the United States to a policy of noncolonization by affirming that “the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects to future colonization by any European powers;” the second endorsed a policy of “hands off “ while arguing that the monarchical system of the Old World “is essentially different from that of America” and that “any attempt” by the Europeans to “extend their system to any portion of this hemisphere” would appear as “dangerous to our peace and safety” and as evidence of “an unfriendly disposition toward the United States;” and the third recalled Washington’s farewell address by embracing a policy of abstention from European political affairs, “In the wars of the European powers in matters relating to themselves we have never taken part, nor does it comport with our policy to do so.”<sup>18</sup>

Monroe and Adams saw European intervention in the hemisphere as a threat to the United State’s security and developed the doctrine to discourage intervention while rejecting the need to be involved militarily in the conflicts between the European powers. Unilateralism evolved into an American form of isolationism, where trade was encouraged, but military treaties and alliances with foreign powers were discouraged. Adams felt that hegemony would ensure

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<sup>16</sup>Ibid., 16.

<sup>17</sup>Ibid., 22.

<sup>18</sup>Mark T. Gilderhus, “The Monroe Doctrine: Meanings and Implications,” *Presidential Studies Quarterly* 36, no. 1 (March 2006): 8.

homeland security by expanding American power on the continent so that it would dominate any European colonies on the continent. Security could best be assured by making certain that no other great power established itself within geographic proximity of the United States.<sup>19</sup> Despite the fact that, at the time Adams developed his idea of hegemony to ensure homeland security, the American ability to develop and maintain a continental hegemony was poor, he felt that time was on America's side in that the nation's population, economy, and potential strength could only grow while the ability of the European powers to control adjoining territories could only diminish.<sup>20</sup>

After the proclamation of the Monroe Doctrine, American strategy remained focused on the continental United States and the territories within the western hemisphere, the only exception being the moves in the Pacific to occupy the Philippines after the Spanish American War. Actions within the hemisphere included two military expeditions into Mexico. The first, an invasion of Veracruz in 1914 was precipitated by the arrest of American sailors by the Mexicans and the arrival of a German ship carrying arms for the Mexicans.<sup>21</sup> As a response to Pancho Villa's attacks into New Mexico, a second movement of American troops was led by Pershing into Mexico from March 1916 to February 1917.<sup>22</sup> Both of these responses by the United States were justified under the prevailing concepts of homeland security. Americans remained isolationists through the first years of the First World War until Germany's policy of unrestricted submarine warfare resulted in the sinking of several American freighters.<sup>23</sup> Although Americans remained isolationists, President Wilson moved to support the League of Nations as a means to prevent further wars. His attempts to move the United States to membership in the league failed and, after

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<sup>19</sup>Gaddis, 28.

<sup>20</sup>Ibid., 27.

<sup>21</sup>Robert C. Baron and Samuel Scinta, "1910-1920 on the World Stage: 1916 General Pershing Invades Mexico, Chasing Pancho Villa." *Millennium 200 --20th Century America: Key Events in History* (Golden, CO: Fulcrum Publishing, 1996), 19.

<sup>22</sup>Ibid., 20.

<sup>23</sup>Thomas Andrew Bailey and Paul B. Ryan, *The Lusitania Disaster: An Episode in Modern Warfare and Diplomacy* (New York, NY: Free Press, 1975), 317.

the return of American troops from Europe, the United States troop levels again were reduced from 3.7 million to 224,000, just above the pre-war troop levels of 208,000.<sup>24</sup> After its first involvement in a European conflict, the United States returned to its isolationist roots.

The surprise attack by the Japanese on American soil demonstrated that the United States could no longer assume that the oceans which separated America from Europe and Asia would protect the nation. Post-World War II security theories moved away from the idea that preemption, unilateralism, and hegemony were the keys to successful homeland defense and toward the idea of forward defense. This was pursued through multilateral alliances, the UN and NATO, among others. The immediate security of the continent became the responsibility of the North American Air Defense Command. For the citizenry, homeland defense became civil defense, which trained civilians how to protect themselves during attacks and developed community air raid shelters.<sup>25</sup> With the commitments imposed by treaties and the shift in security strategy to a global dimension, America's military focus until 11 September 2001, was decidedly international with a limited focus on the continent. From the end of World War II until 11 September 2001, America focused on national security and away from homeland security.

The 11 September attacks led to the creation of the Office of Homeland Security. First addressed on 20 September 2001, in an address to a joint session of Congress and codified on 8 October 2001, with the issuance of Executive Order 13228, the Office of Homeland Security was established as an agency within the Executive Office of the President.<sup>26</sup> Executive Order 13228 also established the Homeland Security Council, which is responsible for advising and assisting the president in all aspects of homeland security as well as serving as the mechanism for ensuring coordination of homeland security related activities between executive departments and agencies

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<sup>24</sup>Richard W. Stewart, *American Military History* (Washington, DC: Center of Military History, United States Army, 2004), 19-21.

<sup>25</sup>Jim Garamone, "Operation Noble Eagle," *Combat Edge* 10, no. 8 (January 2002): 7.

<sup>26</sup>Edward P. Lipton, *Homeland Security Office* (New York, NY: Novinka Books, 2002), 1-2.

and ensuring the effective development and implementation of homeland security policies.<sup>27</sup> With the signing of the Homeland Security Act in 2002, the President created the Department of Homeland Security which replaced the Office of Homeland Security. The new department was created by merging all or parts of twenty-two existing agencies to include the Coast Guard, the Immigration and Naturalization Service, the Transportation Security Administration, the Federal Emergency Management Agency, and the Agriculture Department's Animal and Plant Health Inspection Service.<sup>28</sup> This new department's mission is to lead the unified national effort to secure America, to prevent and deter terrorist attacks, to protect against and respond to threats and hazards to the Nation, to ensure safe and secure borders, to welcome lawful immigrants and visitors, and to promote the free-flow of commerce.<sup>29</sup>

Since the attacks on 11 September, homeland security has come to the forefront of planning, policy, and doctrine. In order to fully understand homeland security, one must first know the definition of homeland security, what the current plans, policies, directives, strategies, and doctrine supporting homeland security are, and how they are to be implemented. These details were essentially nonexistent before the attacks on 11 September 2001. As late as 1999, the *National Security Strategy*, the *National Military Strategy*, and the *Army Strategic Plan* did not clearly define homeland security as a critical, separate mission consisting of specific task areas or placed it in the context of the current defense planning framework of nearly two simultaneous major theaters of war.<sup>30</sup>

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<sup>27</sup>Ibid., 3.

<sup>28</sup>Bruce Maxwell, *Homeland Security: A Documentary History* (Washington, DC: CQ Press, 2004), 430.

<sup>29</sup>US Department of Homeland Security, *Securing our Homeland: US Department of Homeland Security Strategic Plan* (Washington, DC: Government Printing Office, 2004), 4.

<sup>30</sup>Larson and Peters, 11.



## Homeland Security, National Security, and the Department of Defense

While national security is tied to homeland security, there is a distinct difference between the two. National security encompasses both national defense and foreign relations of the United States. Specifically, it deals with the conditions provided by a military or defense advantage over any foreign nation or group of nations, a favorable foreign relations position, or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.<sup>31</sup> Homeland security is defined as a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur. The Department of Defense contributes to homeland security through its military missions overseas, homeland defense, and support to civil authorities.<sup>32</sup> Obviously, national security covers a broader spectrum than homeland security. National security looks outward while homeland security looks inside.

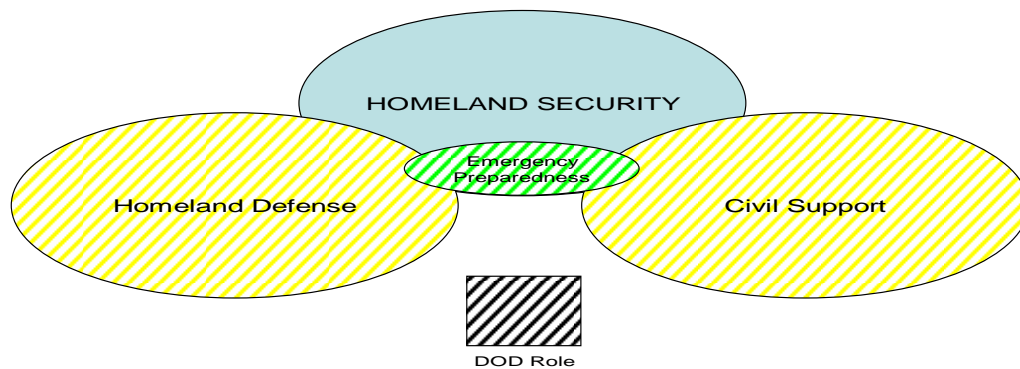


Figure 1. Relationship to Emergency Preparedness to Homeland Security Mission Areas  
Source: US Department of Defense, Joint Publication 3-26, *Homeland Security* (Washington, DC: Government Printing Office, 2005), I-4.

<sup>31</sup>US Department of Defense, Joint Publication 1-02, *Department of Defense Dictionary of Military and Associated Terms* (Washington, DC: Government Printing Office, 2006), 361.

<sup>32</sup>*Ibid.*, 241.

Additionally, the difference between homeland security and homeland defense must be understood. Homeland defense is a subset of homeland security and is defined as the protection of United States sovereignty, territory, domestic population, and critical infrastructure against external threats and aggression or other threats as directed by the President and is the responsibility of the Department of Defense.<sup>33</sup> Homeland security is a broad task requiring all the elements of national power, while homeland defense is a mission of the Department of Defense. This relationship between homeland security, homeland defense, and civil support has created aspects in homeland security with ambiguous goals and capabilities and undefined resources.

Both national security and homeland security are driven by strategies developed and published at the federal level. The *NSS* is published by the Office of the President of the United States. It expands the scope of the United States foreign and security policy to encompass forward reaching preventive activities, including preemption, against hostile states and terrorist groups.<sup>34</sup> The most recent *National Strategy for Homeland Security*, dated July 2002, was published by the Office of Homeland Security, before the establishment of the Department of Homeland Security. The purpose of the *National Strategy for Homeland Security* is to mobilize and organize the nation to secure the homeland from terrorist attacks and provide a framework for action at all levels of government that play a role in homeland security.<sup>35</sup> These documents complement each other in establishing guidance for doctrine developed by federal departments who will be responsible for some aspect of homeland security.

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<sup>33</sup>Ibid.

<sup>34</sup>US Department of Defense, *Strategy for Homeland Defense and Civil Support* (Washington, DC: Department of Defense, 2005), 6.

<sup>35</sup>Office of Homeland Security, vii.

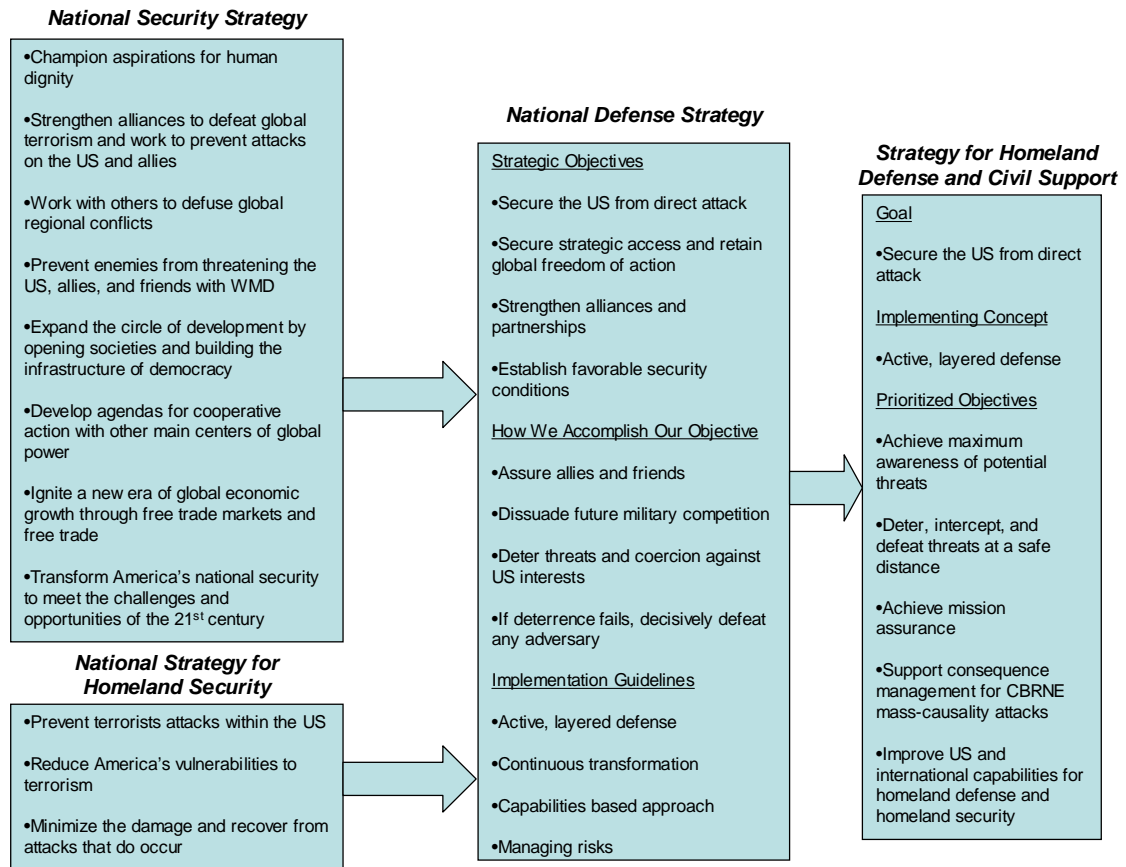


Figure 2. Strategic Underpinnings of the Homeland Defense and Civil Support Strategy  
Source: US Department of Defense, *Strategy for Homeland Defense and Civil Support* (Washington, DC: Government Printing Office, 2005), 6.

For the Department of Defense, both the *National Security Strategy* and the *National Strategy for Homeland Security* feed the *National Defense Strategy*. The *National Defense Strategy* outlines an active, layered approach to the defense of the nation and its interests. It seeks to create conditions conducive to respect for the sovereignty of nations, and secure an international order favorable to freedom, democracy, and economic opportunity.<sup>36</sup> Its implementation hinges on an active, layered defense which requires an early warning of a

<sup>36</sup>US Department of Defense, *National Defense Strategy*, iv.

pending threat by maintaining a presence in the foreign areas, the approaches to the United States, and in the homeland. This active layered defense is designed to defeat the most dangerous challenges early and at a safe distance, before they are allowed to mature.<sup>37</sup> The *Strategy for Homeland Defense and Civil Support* integrates the objectives and guidance expressed in the *National Security Strategy*, the *National Strategy for Homeland Security*, and the *National Defense Strategy* to guide Department of Defense operations to protect the homeland.<sup>38</sup>

## **The Strategy for Homeland Defense and Civil Support**

The Department of Defense's key strategy for homeland security is the *Strategy for Homeland Defense and Civil Support*. As explained above, the Department of Defense's contribution to homeland security is homeland defense and military support to civil authorities. The *Strategy for Homeland Defense and Civil Support* provides guidance from the Secretary of Defense on how the department will support homeland security.

One of the key concepts in the Department of Defense's strategy is developing an active layered defense. These layers are identified as forward regions, defined as foreign land areas, sovereign airspace, and sovereign waters outside the United States homeland; the approaches, defined as the sovereign territory of Canada and Mexico, and the waters and airspace geographically contiguous to the United States; and the homeland, which includes the United States, its territories and possessions, and the Commonwealths and Compact States of the Pacific.<sup>39</sup> The strategy has identified organizations and assigned specific defensive tasks for support to each of these layers.

The strategy also identifies a strategic goal--securing the United States from direct attack, and assigns key objectives.<sup>40</sup> These objectives are divided into categories. In some cases the

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<sup>37</sup>US Department of Defense, *Strategy for Homeland Defense and Civil Support*, 6.

<sup>38</sup>*Ibid.*, 6.

<sup>39</sup>*Ibid.*, 11-12.

<sup>40</sup>*Ibid.*, 14.

Department of Defense leads military missions to deter, prevent, and defeat attacks on the United States, its population, and its defense critical infrastructure. In other instances, at the direction of the President or Secretary of Defense, the Department of Defense provides support to civil authorities in order to prevent terrorist incidents or manage the consequences of an attack or disaster. Department of Defense will also share its capabilities and expertise with domestic agencies and international partners in support of their efforts.<sup>41</sup> These categories are used to focus five key objectives: (1) achieve maximum awareness of potential threats; (2) deter, intercept, and defeat threats at a safe distance from the United States, and United States territories and possessions; (3) achieve mission assurance; (4) ensure the department's ability to support civil authorities in domestic Chemical, Biological Radiological/Nuclear and high yield Explosive (CBRNE) consequence management; and (5) improve domestic and international partner capabilities for homeland defense and homeland security.<sup>42</sup>

The *National Security Strategy*, the *National Strategy for Homeland Security*, the *National Defense Strategy*, and the *Strategy for Homeland Defense and Civil Support* provide guidance to the Department of Defense in its role in homeland security. These documents state that the Department of Defense's role in homeland security is primarily in homeland defense and support to civil authorities. They further articulate that the Department of Homeland Security is the lead federal agency for homeland security and that its primary mission is to prevent terrorist attacks within the United States.<sup>43</sup>

## **Homeland Security and the Department of Homeland Security**

The Department of Homeland Security has produced two strategies which frame homeland security planning, the *National Strategy for Homeland Security*, published under the Office of Homeland Security before the department was formed, and the *Department of*

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<sup>41</sup>Ibid.

<sup>42</sup>Ibid., 15.

<sup>43</sup>Ibid., 5.

*Homeland Security Strategic Plan*. Both of these documents are designed to provide guidance to the Department of Homeland Security.

The *National Strategy for Homeland Security* complements the *National Security Strategy of the United States* by addressing the very specific threat of terrorism in the United States and by providing a comprehensive framework for organizing the efforts of federal, state, local, and private organizations whose primary functions are often unrelated to national security.<sup>44</sup> The strategy also establishes the strategic objectives for the Office (later the Department) of Homeland Security, and identifies six critical mission areas. The focus of this document is to frame the requirements to ensure that there is a plan to protect the United States from terrorist attacks and to establish goals for the Office of Homeland Security.

The Department of Homeland Security's Strategic Plan provides the mission, goals, and objectives of the department. These goals--awareness, prevention, protection, response, recovery, service, and organizational excellence provide a framework for the objectives. While all of the objectives outlined in the strategy are to be performed by services under the Department of Homeland Security, many would also be applicable to Department of Defense organizations.

The Department of Homeland Security has incorporated a vast network of government organizations to protect the homeland from terrorist attacks. It has also worked to interlock its strategies into the existing national strategies to ensure that they are mutually supportive.

## **Homeland Security and the States**

The states have always held a role in their own security, and, by extrapolation, the homeland security of the United States. Historically invaders into the country were identified and

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<sup>44</sup>Office of Homeland Security, 5.

engaged by members of militias, to include Indian attacks and militia involvement in every war inside the United States borders. This responsibility evolved into state reactions to natural disasters and eventually into anti-terrorism.

After the 11 September attacks, the states and territories followed the lead of the federal government and established their own departments of homeland security. Each state and territory now has different homeland security organizations, strategies, and plans in place to meet their specific needs. In some instances, the state head of homeland security is also the Adjutant General of the state National Guard or a member of the National Guard. The development of a homeland security department at the state level allows for a method of graduated response in the instance of a terrorist attack or natural disaster.

The link between the state and federal level is the *National Response Plan* and the National Incident Management System. Both the plan and the system work to bridge the gap between the federal and state level if it is needed. The basic premise of the *National Response Plan* is that incidents are handled at the lowest jurisdictional level possible.<sup>45</sup> Based on this premise, there is a method in place in every state and territory that allows local governments to assess their ability to control an incident at their level. If they are not able to handle it at the local, lowest jurisdictional level, the process allows them to request assistance from the next higher level, typically the state or territory government. If the state or territory governor feels that state resources and capabilities are overwhelmed, the governor can then request federal assistance under a presidential disaster or emergency declaration.<sup>46</sup>

While each state and territory has homeland security departments, there is a mechanism in place to allow requests for federal assistance. Because these organizations are managed by each state, each one is be duplicates unique but typically all of them mirror the organization and

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<sup>45</sup>US Department of Homeland Security, *National Response Plan* (Washington, DC: Government Printing Office, 2004), 15.

<sup>46</sup>*Ibid.*, 8.

functions of the federal organization. The state's organic military capability resides in the National Guard.

## **The Doctrine of Homeland Security**

Since 11 September, there have been a myriad of documents from the federal government which attempt to explain and define homeland security. These include directives, executive orders, laws, strategies, guidance, plans, and instructions, a thorough listing of which can be found in Joint Publication 3-26, *Homeland Security*. Until the publication of the *National Strategy for Homeland Security*, there was no formal definition of homeland security. Larson and Peters provided a working definition in 2001 that defined homeland security as consisting of all military activities aimed at preparing for, protecting against, or managing the consequences of attacks on American soil, including all actions to safeguard the populace and its property, critical infrastructure, the government, and the military, its installations, and deploying forces.<sup>47</sup> The definition of homeland security according to the Department of Defense and the *National Strategy for Homeland Security* was defined in 2002 as a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.

As has been shown, current homeland security doctrine has been driven down from the higher levels of government to the lower ones. This is also true at the Department of the Army level. After the attacks of 11 September, the *National Strategy for Homeland Security* the *National Security Strategy of the United States* became the two capstone documents that would govern homeland security doctrine.

After the publication of the 2002 *National Security Strategy* and the *National Strategy for Homeland Security*, Joint Publication 1-02, *Department of Defense Dictionary of Military and*

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<sup>47</sup>Larson and Peters, "Preparing the U.S. Army for Homeland Security: Concepts, Issues, and Options," xvii.



*Associated Terms* established the doctrinally correct definition of homeland security by repeating the definition published in the *National Strategy for Homeland Security* and adding that the Department of Defense contributes to homeland security through its military missions overseas, homeland defense, and support to civil authorities.<sup>48</sup> Joint Publication 3-26, *Homeland Security*, published in 2005, was the first to give directive guidance to all branches of the military regarding homeland security. It established the Department of Defense approach to homeland security, its contribution to homeland security, command relationships and responsibilities, and formally separated homeland security into homeland defense and civil support.

While Joint Publication 3-26 was being written, the Army published Field Manual 3-07, *Stability Operations and Support Operations*. While this field manual did not specifically outline homeland security operations, there were several areas which focused on domestic operations, to include security assistance, humanitarian and civic assistance, combating terrorism, and domestic support operations. This field manual also outlined the legal capabilities of the Army National Guard several times and implied a use for them in domestic operations.

Current Department of Defense guidance for the use of the military in homeland security, homeland defense, and civil support is contained in Joint Publication 3-26, *Homeland Security* and *Strategy for Homeland Defense and Civil Support*. *Homeland Security* outlines the Department of Defense homeland security framework of prepare, detect, deter, preempt, defend, and respond.<sup>49</sup> It also outlines command relationships, homeland defense missions, and civil support missions. The *Strategy for Homeland Defense and Civil Support* discusses the Department of Defense contribution to homeland security and the Department of Defense homeland security operational framework. It covers command and control relationships within Department of Defense and interagency relationships, discusses Department of Defense

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<sup>48</sup>US Department of Defense, Joint Publication 1-02, 241.

<sup>49</sup>US Department of Defense, Joint Publication 3-26, *Homeland Security* (Washington, DC: Government Printing Office, 2005), vi.

homeland defense missions, including supporting operations and enabling activities, and covers Department of Defense civil support missions supporting operations and enabling activities. Both of these documents support the employment of the National Guard in homeland security, and provide guidance for its use. In particular, the *Strategy for Homeland Defense and Civil Support* identifies air and missile defense, land defense, CBRNE response, and critical infrastructure protection among the most promising areas for the employment of the National Guard.<sup>50</sup>

The *Strategy for Homeland Defense and Civil Support* proposes an active, layered homeland defense which integrates homeland defense and forward operations conceptually and operationally.<sup>51</sup> *Homeland Security* develops the concept of homeland security into the functions of military missions overseas, homeland defense, and support to civil authorities.<sup>52</sup> While the *Strategy for Homeland Defense and Civil Support* provides possible mission areas for the National Guard, there is no guidance as to the operational and tactical integration of Guard and federal troops in homeland security.

There are other documents which specifically apply to the Army National Guard and those which provide broad guidance which could be interpreted for use in Army National Guard policy and planning. The Army National Guard is specifically mentioned in the *QDR*, the *Strategy for Homeland Defense and Civil Support*, the *National Response Plan*, Department of Defense Directive 3020.36, *Assignment of National Security Emergency Preparedness (NSEP) Responsibilities to DOD Components*, Field Manual 3-07, *Stability Operations and Support Operations*, Field Manual 100-19: *Domestic Support Operations*, and Joint Publication 3-26, *Homeland Security*.

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<sup>50</sup>US Department of Defense, *Strategy for Homeland Defense and Civil Support*, 35.

<sup>51</sup>*Ibid.*, 39.

<sup>52</sup>US Department of Defense, Joint Publication 3-26, I-3.

## **Conclusion**

While homeland security has always been a necessity in the United States, there have been different approaches through the years to maintain it. After the attacks of 11 September 2001, the government revised and developed new doctrine and established the new Department of Homeland Security. These changes affected the military and how and would operate in the new environment.

The Department of Homeland Security created a divide between the responsibilities of the new department and the Department of Defense. The Department of Homeland Security would be domestically proactive, and the Department of Defense would be reactive. These two stances have no common organization to ensure a unity of effort once the domestic terrorist boundary is crossed.

## THE NATIONAL GUARD

A well regulated militia, composed of the body of the people, trained in arms, is the best most natural defense of a free country.

James Madison

### Historical Perspective

The National Guard has historically played a unique role in the United States military. With its roots in the English military system, the early colonists believed that every free, white male settler incurred a military obligation and, accordingly, charters issued by the king to the colonizing agencies gave their representatives the right to assemble forces of able-bodied males between the ages of sixteen and sixty, who were authorized to expulse, repel, and resist by force of arms any person or group who attempted the destruction or invasion of the inhabitants.<sup>53</sup> This traditional militia evolved into a force integrated into the United State's organized military forces, but with legal and organizational capabilities different from either the active component or the military reserves.

The National Guard is the only military organization in the United States with a dual purpose, service to both the state and the nation. This tradition of service, combined with the United States' desire to maintain a small standing Army, has put the National Guard and its predecessors in the distinctive position of being instrumental in the defense of the American homeland for more than three hundred years. In addition, throughout its history, the National Guard in its various incarnations has contributed to homeland security by participating in military missions overseas, homeland defense, and support to civil authorities. In order to fully understand the culture, basis, and missions of the modern National Guard, one must first look at its history.

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<sup>53</sup>John K. Mahon, *History of the Militia and the National Guard* (London: Collier Macmillan, 1983), 14.

The first organizations in the English colonies charged with homeland security were constituted by the settlers themselves. The first colony at Jamestown was converted from a trading station to a fortified camp after Indian attacks, necessitating the colonists to become a continuously armed force with established day and night watches and organized training on Saturdays.<sup>54</sup> These settlers could well be considered the original American militia, and would probably have been the forbearers of current National Guard units had the colony been successful.

A similar situation confronted the colonies established at Plymouth. Miles Standish organized a Plymouth militia into four squadrons and instituted a through plan for watches, guards, and alarms.<sup>55</sup> The purpose of these squadrons was to defend the settlements. As the number of villages and towns in Massachusetts increased, so did the militia requirements.

These early squadrons eventually became the North, South, and East regiments on 13 December 1636, the birthday of the modern National Guard. Each regiment had a colonel commanding, a full time muster master who maintained unit rolls, and company officers who were chosen by election. Companies were the basis of each regiment and were typically formed around a town and were centered around a particular geographical area. The current practice of building unit armories in towns and cities which house equipment and personnel and support their communities in times of emergency is based on this original historic precedent. These armories provide the basis for the forward deployment of the National Guard into 3,200 communities throughout the nation.<sup>56</sup>

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<sup>54</sup>Michael D. Doubler and John W. Listman, *The National Guard: An Illustrated History of America's Citizen-Soldiers* (Washington, DC: Brassey's, Inc., 2003), 2.

<sup>55</sup>Michael D. Doubler, *Civilian in Peace, Soldier in War: The Army National Guard, 1636-2000*. (Lawrence, KS: University Press of Kansas, 2003), 14.

<sup>56</sup>US Department of Defense, *Strategy for Homeland Defense and Civil Support*, 35.

When settlers moved inland, interaction with the Indians became more common and contentious. The Pequot War is the first instance in which the militia fought a declared war. After the near destruction of the Pequot tribe and the realization that conflicts with Indians would continue, the militia adapted the minuteman concept, where local males would be able to quickly transition from everyday vocation to a member of a military force. This would guarantee a rapid response to Indian incursions. On 12 August 1645, legislators passed the first law which articulated that each militia company was to select one third of its members who could be ready with a half hour warning to respond to alarms.<sup>57</sup>

As England moved to strengthen its hand in the Americas, conflicts moved from settler against Indian to those involving European powers. With these battles came the increased use of militia to support British troops. This union gave the colonial militia experience and training not only in the Indian fighting that it had been doing previously, but also in the tactics of European forces and in the integration of militia and regular forces. This added experience would serve the colonists well when they declared their independence from the British.

The American Revolution began on 19 April 1775, when British soldiers attempted to seize military supplies at Concord, Massachusetts. The first contact between these British soldiers and the local militia was on the common at Lexington, where a small militia group was engaged and dispersed by the British. As the British forces attempted to cross the North Bridge in Concord, the local militia engaged the British forces in what became the initial battle of the American Revolution, and another instance of the militia defending its homeland.

The American Revolution also marked the creation of the American military system which includes a Regular Army and an organized militia. On 14 June 1775, the Second Continental Congress created America's first standing force of regulars by voting to raise ten companies of riflemen from Pennsylvania, Maryland, and Virginia.<sup>58</sup> Although the nation had a

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<sup>57</sup>Doubler, *Civilian in Peace, Soldier in War*, 17.

<sup>58</sup>*Ibid.*, 47.

new standing Army led by George Washington, there was no intent to disband the militias or to put them under the direct control of the Continental Army. The new military organization consisted of Continental forces, which Congress required colonies to raise, organize, and equip, and militia forces that were self-equipped and organized. Together, these forces would fight in nearly all of the American Revolution's major engagements.<sup>59</sup> While there were problems with the militia organization, to include a reoccurring problem with the limited lengths of obligated service for militiamen, the experiment of combining federal and militia forces to secure the homeland against foreign attack was successful. The militia carried out three missions without which independence could not have been won: (1) controlling the communities and holding them to the patriot cause either through indoctrination or intimidation; (2) providing large numbers of men on short notice for brief periods of emergency service; and (3) through the militia system, authorities bribed or drafted enough men each year to keep the Continental Army alive.<sup>60</sup>

Congress' original intent to limit the standing army and rely on the citizenry to repel attacks became evident soon after the Peace of Paris. In October 1783, six months after the peace, all troops who had entered into the Continental Army for the duration of the war were discharged, and by June 1784, the standing Army consisted of eighty veterans guarding the military stores at West Point and Fort Pitt.<sup>61</sup> The government's perspective, given the few members of the standing Army and their capabilities, was that the security of the newly formed country would be the responsibility of the militias.

After the Revolutionary War, the militia and the Continental Army became the focal point in the argument between Federalists and Republicans on the strength of the central government. The Federalists believed that the Continental Army should be maintained in order to protect the new nation. The Republicans felt that the Continental Army posed a threat to the new

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<sup>59</sup>Ibid., 49.

<sup>60</sup>Mahon, 44.

<sup>61</sup>Doubler, *Civilian in Peace, Soldier in War*, 69.

government at least as great as the threat from external governments, and believed that the national military security should be based on the militia system. George Washington proposed a military organization of four elements: a small Regular Army to garrison posts on the frontier; a well organized militia who would benefit from reforms; the establishment by the central government of a series of arsenals for stockpiling arms and equipment; and the founding of one or more military academies.<sup>62</sup> His concept was that the Regular Army and the reformed militia would be able to band together if necessary to defend the country. The controversy was resolved at the meeting of the Constitutional Convention in 1787. The new Constitution limited the strength and funding of the Regular Army and placed it under the control of the president as commander in chief. It also placed the militia under the control of the legislative branch and its organization and maintenance became the responsibility of individual states. Congress, not the president, acquired the authority to summon the militias into federal service for three specific tasks only: (1) to execute laws of the Union; (2) to suppress insurrections; and (3) to repel invasion.<sup>63</sup> This system effectively divided the Army in two, denying any one person or organization the ability to control all the country's military power. The fundamental separation of the Regular Army and the militias, and the responsibilities of each, would be debated throughout American history. With the new Constitution, the militia was assigned the dual tasks of defending the nation against invasion and the suppression of insurrections. The nation and the various states relied on the militia to defend the homeland and support civil authorities.

As American settlers moved westward, friction between the young nation and the Indians, who were often supported and encouraged by the British, increased, and the militia became the tool to militarily protect the westward expansion. In 1790, under Harmer, and in 1791 under St. Clair, forces which consisted of primarily militia with additional regular units were defeated by Indians in the Northwest frontier. Both Harmer and St. Clair defended themselves by

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<sup>62</sup>Ibid., 63.

<sup>63</sup>Mahon, 49.



criticizing the abilities of their militia forces. The Whiskey Rebellion of 1794 caused President Washington to call out the militia to suppress the uprising. Four states provided nearly 13,000 troops who quickly restored order and established the militia as a reliable national instrument for maintaining domestic order.<sup>64</sup>

Thomas Jefferson's election as the third president again highlighted the usefulness of the militia. Jefferson's defense plans centered on a strong Navy, coastal defenses, the militia, and a small Regular Army.<sup>65</sup> With Jefferson's attitudes came a reduction in the regular force and a realistic look at the militia forces. By 1804, there were 525,000 men enrolled in the militia, which was organized into a hodgepodge of regiments and brigades, but without the weapons to arm units adequately.<sup>66</sup> It became clear that they were far from able to provide a coherent national defense force. By the end of Jefferson's second term, the federal government had enacted legislation which provided funding for the arming of the militia, an important step in establishing a precedent for allowing the federal government to equip the militia based on each state's strength and relieving each militiaman of the responsibility for maintaining his own arms and equipment. The new role of the militia prompted one commander to equate the militia as the nation's shield and the Regular Army as its sword, a condition which still exists today.

The first test of Jackson's militia concept as the force to ensure homeland security was the War of 1812. Actions by the British in 1807 and their continued attempts to dominate American trade on the seas prompted a declaration of war by the United States against Great Britain in 1812. The Jacksonian plan inherited by Madison first became problematic when governors from New England refused to send troops to support the war effort. Legally, the president's call for the militia was believed to be unconstitutional by the governors of Connecticut and Massachusetts because the British incursions were not land invasions but were at

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<sup>64</sup>Doubler and Listman, 18.

<sup>65</sup>Ibid., 19.

<sup>66</sup>Doubler, *Civilian in Peace, Soldier in War*, 81.

sea and not within American territory. There was also a refusal by militia troops to invade into Canada with the regular forces because of questions regarding the legality of using militia forces outside of the continental United States. Tactical problems arose when leaders from both the militia and the regulars refused to give control of their troops to each other. Additionally, there were the same militia tour length problems as had been seen in the Revolutionary War. Despite the problems, the militia was successful in both the defense of Baltimore and the Battle of New Orleans. The War of 1812 posed many questions as to whether the militia and the regular force could fully integrate to defend the country against foreign attack. Despite the federal reforms and the faith of Jackson in the militia, legal and social problems prevented it from becoming a force which could fully defend the United States.

In spite of the spotty record of the militia during the War of 1812, there was still a belief among the citizenry and statesmen that the militia should be the main defensive organization of the United States. In 1821, Congress cut the authorized number of enlisted men in the Regular Army from 10,000 to 5,642.<sup>67</sup> The decreased ability of the reduced Regular Army increased the need to rely on the militia for protecting the homeland.

This increased reliance and the problems experienced in the War of 1812 again caused the federal government to assess the militia. Existing militia laws still required that all males between the ages of sixteen and sixty serve in the militia, providing an unmanageable militia in an era of expanding emigration and birthrates. With the large numbers and the inability of states to maintain their militias came the failure of the militias to maintain training and rolls. Eventually through the 1830s and 1840s, many states eliminated compulsory service or the penalties for failing to attend musters. The notion that the nation's security could be maintained by organized militias became a facade.

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<sup>67</sup>Mahon, 78.

As the enrolled militia waned, a new form of military organization came into being. The volunteer militia began to take the place of the enrolled militia. These volunteer organizations had an historical basis in volunteer organizations such as the Ancient and Honorable Artillery Company which was formed in Boston in 1638. The new organizations were typically formed around a common interest and were manned by those who could afford the membership fees and equipment costs. Membership typically required sponsorship, and bylaws outlined membership, equipment, uniform, and training requirements. Despite being volunteer organizations, the states were involved in the new militias. In Massachusetts, with the dwindling support for the organized militia, the Commonwealth decreed that the organized militia would no longer arm themselves or undergo training, and that the “active” militia would consist of up to 10,000 of the volunteer militia grouped into militia formations. Because of their expense, states welcomed volunteer cavalry and artillery units and often provided funds to defray the cost of purchasing and maintaining horses, cannons, saddles, and ammunition.<sup>68</sup> These organizations would be useful to the state in times of need, and, by being manned and partially equipped by the volunteer organizations, would be cheaper and easier to maintain than a similar organized militia unit.

The new organizations quickly proved useful to state and local officials in maintaining law and order. The volunteer militia began to be used to enforce laws, act as posses, guard prisoners, and quell agitated mobs. Once again, militia forces became instrumental in providing a trained military force to support civil authorities. Roles for the enrolled militia that had been required under the Constitution were now being fulfilled by the volunteer militias that had not been envisioned when the Constitution was written.

With the continued dispute with Mexico along the Texas border, the United States would come to test the new volunteer militia. In April 1846, the United States declared war against Mexico, and President Polk authorized the calling organized militia for six months of service,

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<sup>68</sup>Doubler and Listman, 24.

with the assurance that the militia would be used only defensively, but without the promise that they would stay within the United States. By the end of the war, this force consisted of 12,500 men, or 12 percent of the manpower for the war, half of whom stayed in the United States to guard sensitive areas as the rest of the Army moved into Mexico.<sup>69</sup> The majority of the forces were volunteers. While there were problems with the volunteer forces, such as the demand from the early volunteers that they be released after serving their one year commitment despite the fact that they were halfway between Vera Cruz and Mexico City when their terms expired, the volunteer forces satisfied Congress' belief that they could be successful in securing the homeland and cut the regular force from 29, 512 enlisted in 1847 to 11,685 in 1855.<sup>70</sup> The new volunteer militias proved that the nation could successfully fight a war on foreign soil with a predominantly volunteer force which would willingly return to civilian life at the end of the hostilities and would not require an increase in the Regular Army. The new volunteer organizations seemed to solve the federal government's need to maintain a small standing Army while avoiding the Constitutional problems of using militia forces outside of the United States.

The service of the volunteer militias in the Mexican war was a prelude to the service of these organizations in the Civil War. With the attack on Fort Sumter, Lincoln evoked the Calling Forth Act<sup>71</sup> with familiar results; states who had not yet decided whom they supported refused to supply troops. Because of the inability of the states to supply members of the organized militia, the task of securing Washington in the early stages of the war again fell upon the volunteer militias. By the end of the Civil War, the Army strength was just over one million men. Within six months of the end of the war, nearly 800,000 militiamen and volunteers were mustered out, leaving the Army's strength at 56,815.<sup>72</sup> Again, the nation was able to fight a protracted war with

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<sup>69</sup>Mahon, 91.

<sup>70</sup>Ibid., 94.

<sup>71</sup>The Calling Forth Act was enacted by the Second Congress and gives the president the authority to mobilize the militia in the event of invasion or insurrection beyond the capabilities of law enforcement to control.

<sup>72</sup>Doubler, *Civilian in Peace, Soldier in War*, 110.

the main force consisting of volunteer troops who willingly returned to their civilian lives after the war, and the volunteers were able to supplement regular forces in military missions.

With the end of the Civil War came a decline in the number of volunteer militia organizations. The main use of the volunteer militia between 1865 and 1906 was law enforcement during labor disputes, which gave the appearance that the militias were merely an arm of the corporations in the breaking of unions and was a factor in the reduced memberships. These forays into law enforcement by both the militias and the Regular Army had two significant outcomes, the increase in funding by the states for the militias and The *Posse Comitatus Act of 1878*, which prohibited the Army from aiding civilian authorities unless under orders by the President. This use of the volunteer forces as simply a military force to support civilian authorities, and its negative connotations, helped volunteer leaders understand that the volunteers must primarily become an organization which supports the regular force.

The militias flourished in the new American territories in the west. As the citizens moved westward, they continued to be threatened by Indian attacks. These threats, and the need for protection, increased the number of militias in the new states and territories, where they became responsible for protecting against bandits and Indians, guarding prisoners, controlling riots, safeguarding officials, and settling disputes over land and water rights.<sup>73</sup>

As the strength of the volunteer militias and their roles in assisting regular forces matured, the senior members of the militia formed the National Guard Association, with the intent of lobbying Congress for militia reforms. The association not only focused the lobbying efforts of the individual units, but changed the names of the units so that they now came under the National Guard of each state. The National Guard Association was concerned with changing the public perception that they were primarily strike-breakers and not a military force available to the government. Eventually this manifested itself as the desire for the militias to become an

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<sup>73</sup>Ibid., 115.

organized combat reserve of the Army, with service to the nation in wartime the “pride and life of the National Guard.” This desire coincided with the change in thought in the Regular Army that the Army’s focus should shift from domestic affairs and toward operations outside of the United States. The new focus required changes in training for the European style of war and the need to develop along the European staff and organization model. These mutual interests allowed closer cooperation between the Army and the militias, and, by the late 1890s nearly fifty Army officers were assigned full time to states with more added temporarily during the Guard’s summer training.<sup>74</sup>

While the Spanish-American War did not change the role of the National Guard in the area of homeland security, it affected its development. With America’s entry into the war, there was again a movement to supplement the Regular Army with the National Guard. The presidential call-up had new stipulations which had not been seen before. It gave more authority to the states and stipulated that the number of volunteers be proportional to the population and that the governors would appoint officers through the regimental level. It formed the Army of the United States into two distinct organizations, the regulars and the volunteers. Furthermore, it allowed for National Guard units to deploy overseas as long as each man volunteered as an individual. The last stipulation was needed because the War Department did not have the legal authority to accept National Guard units into federal service. With the popularity of the war and the desire of volunteers to fight, the limitations of the appointment of general officers and the requirement for each soldier to volunteer individually, did not limit the number of volunteers who served. At the peak of war service in 1898, there were 3.8 volunteers for every one of the 56,362 regulars.<sup>75</sup>

The Spanish-American War again gave the Congress and federal government the opportunity to evaluate the National Guard’s performance in war. The outcome of these

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<sup>74</sup>Ibid., 120.

<sup>75</sup>Mahon, 133.

evaluations was the *Militia Act of 1903*, which repealed the *Militia Act of 1792*. The new act provided increased funding and equipment from the federal government in exchange for the National Guard conforming to Army standards in training and organization. It also required guardsmen to attend a specific number of training days per year and an annual training period, for which the guardsmen would be paid. The National Guard was also now subject to federal call-ups within the United States for up to nine months. Finally, the act formally divided the militia into two groups, the Organized Militia, or National Guard, and the Reserve Militia, consisting of males available for military service under the old provisions of the 1792 act. The 1903 act was particularly important in that it established a formal relationship between the states and the War Department, but it did not clarify this specific relationship and did not provide the mechanism to mobilize the National Guard for overseas service. The *Militia Act of 1903* was followed by the *Militia Act of 1908*, which addressed the National Guard's ability limitation on length and location of mobilization. Under the new act, the president was able to call the Guard during national emergencies and the limits on the length and location of deployment were removed. The act also created the Division of Military Affairs, which was responsible for overseeing the arming, equipping, discipline, and organization related to the National Guard. With the 1908 act, the Army was able to better organize and plan for the use of the National Guard in military operations. This process culminated in the War Department's publication in 1912 of *The Organization of the Land Forces of the United States*. The publication deemed that, in a major war, the Regular divisions would deploy and fight while National Guard divisions and volunteers mobilized. The *Organization of the Land Forces of the United States* gave birth to the plan for the use of the National Guard which exists to this day.

With the requirement for troops to serve outside of the United States with the occupation of the Philippines, the National Guard again performed its role in defending the homeland. The expeditionary demands on regular troops meant that the War Department had to rely on National Guard units to man coastal artillery batteries. In 1907, Congress passed legislation allowing the

manning of these batteries by the National Guard. By 1912, the National Guard had created 126 Coast Artillery companies with 8,186 soldiers manning fortifications on the East, West, and Gulf coasts.<sup>76</sup>

Despite the *Militia Act of 1908*, there were still questions as to the deployability of the National Guard. In 1912, the Attorney General determined that the *Militia Act of 1908* was unconstitutional because the Constitution stipulated that the militia could not be called to overseas service. This decision drove the publication of the War Department's *Statement of a Proper Military Policy for the United States* in 1915 which established the Continental Army Plan, calling for a 500,000 man Army consisting of 121,000 Regulars, a reserve of 379,000 made up of men who had served at least two years in the Regular Army, and 500,000 trained reservists. The National Guard was not part of the 500,000 man Army and was considered strictly a homeland defense organization which would man coastal defenses and guard strategic positions and key lines of communications within the continental United States.

As a means to correct the possible constitutional issues with the 1908 Militia Act and end the unrealistic requirement under the Continental Army Plan to double the size of the Regular Army, the *National Defense Act of 1916* was passed. The act accomplished three things. First, it provided for reorganization and a substantial increase in the Regular Army. Second, it integrated the National Guard into a federal pay system, required regular inspections, and increased federal control with the creation of the Militia Bureau, a stronger predecessor to the Division of Military Affairs manned by National Guard soldiers. Finally, it established a federal officer and enlisted reserve organization separate from the National Guard.<sup>77</sup> From 1916 on, the Army would consist of three distinct organizations, the active component, the National Guard, and the Army Reserve.

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<sup>76</sup>Doubler and Listman, 56.

<sup>77</sup>Elbridge Colby, *The National Guard of the United States: A Half Century of Progress* (Manhattan, KS: Military Affairs/Aerospace Historian, Kansas State University, 1977), (VI) 1.



The National Guard would begin to fill its new obligations under the *National Defense Act of 1916* following the raid on Columbus, New Mexico, by Pancho Villa. The raid prompted a punitive response by the United States, and regulars under the command of Brigadier General Pershing moved into Mexico to apprehend the raiders. With the increased tensions along the Mexican border, National Guard units from Texas, New Mexico, and Arizona were ordered by the President to the Mexican border for protection. By the first of July, 110,957 guardsmen had reached the Mexican border.<sup>78</sup> Despite the fact that the guardsmen on the border accompany the Regular Army into Mexico, it was instrumental in maintaining security on the border.

Soon after the expedition into Mexico, the United States entered World War I, and again the National Guard provided troops for the Army. President Wilson's mobilization of the National Guard was done in two phases, with the initial phase calling guardsmen from eleven states, and the second calling the rest of the necessary 400,000 guardsmen. After mobilization was completed, the President used the power granted him under the *National Defense Act of 1916* and the *Selective Service Act of 1917* to draft the entire mobilized National Guard into federal service as individuals, ending the earlier questions of whether it was constitutional to deploy National Guard troops outside of the United States.

The rapid mobilization of the National Guard left the states without a force for the governors. To fill this need, the War Department created the United States Guards, who fell under the administrative control of the Militia Bureau but under operational control of the Army's geographic departments. These troops were made up of men not qualified for the draft or overseas duty who would provide security at key installations, allowing Regular and Guard troops who had been performing these duties to deploy. The states also formed their own forces, State Guards, who would respond to natural disasters, maintain National Guard armories, support law

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<sup>78</sup>Mahon, 151.

enforcement, and fulfill duties that the National Guard would have performed when under state control.

The existence of the National Guard undoubtedly allowed for the American Expeditionary Force to move rapidly into Europe from the United States. Without the existence of a trained and available pool of soldiers, America would have had to wait until such a pool was drafted, trained, and deployed. Indeed, National Guard combat units arrived in Europe shortly after regular Army unit. For example, the 26th “Yankee” Division, the first National Guard division to arrive in Europe, arrived in France on 28 October 1917, just four months after General Pershing and his staff arrived. The imagination of the War Department and the states allowed National Guard units to deploy overseas without great detriment to homeland security. World War I proved that the United States could secure the homeland, fight and win wars overseas, while maintaining a relatively small standing Army with the support of the National Guard.

Despite the success of the National Guard in World War I, issues again rose at the federal level soon after the armistice. In January 1919, the War Department forwarded to Congress a plan to organize the Army into a standing force of 500,000 and 500,000 trained reservists, with no mention of the National Guard.<sup>79</sup> The debate in Congress stirred by this plan resulted in the *National Defense Act of 1920*. The new act stated that the Army of the United States consisted of the Regular Army, individuals in the Organized Reserves, and the National Guard while in federal service, designated the Guard as the primary federal reserve, and stipulated that the Organized Reserves would provide a pool of officers during war and man Reserve Divisions to train conscripts during national emergencies. The 1920 act authorized an active Army strength of 298,000 and a National Guard maximum strength of 435,000. It also stipulated that the Army would not discharge guardsmen as individuals, but that guardsmen would revert to their state status once released from active duty. Finally, the act established that the chief of the Militia

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<sup>79</sup>Doubler, *Civilian in Peace, Soldier in War*, 186.

Bureau would be a National Guard major general appointed by the president for a four year term. The result of the 1920 reform was that the National Guard became an established organization within the Army with an advocate in the Militia Bureau who was a member of the organization. These changes ensured the viability of the National Guard and directly tied the Guard to the federal forces.

During the period between the two world wars, the National Guard returned to the same pre-war missions that it had performed in the past. Legislatively, the only change came in 1933 when the duality of the National Guard was finally legally outlined. The National Guard of the United States was established as a permanent reserve component of the Army consisting of federally recognized National Guard units, while the National Guard of the several States consisted of the voluntary members of the state militias who served under the governors. This distinguished the National Guard of the United States as guardsmen on federal active duty and the National Guard of the several States as the same guardsmen while serving on State active duty.

With war looming on the horizon again in 1940, President Roosevelt ordered the mobilization of the National Guard and reserve for twelve months of service in the Western hemisphere. While the mobilization allowed units to begin training together and become more cohesive, the problems the military incurred during the decreased military spending of the 1930s became evident. There were not enough uniforms, weapons, and equipment available to the mobilized units, and they required an infusion of draftees to bring divisions to full strength. The attack on Pearl Harbor ended the questions that the mobilized guardsmen had about what would happen when their one year of mobilization had ended.

As had happened in World War I, the states again required manpower to perform the functions formerly performed by guardsmen while on state duty, and they again created State Guard forces who took over those responsibilities. What changed in World War II was the status of the controlling headquarters for the National Guard. With all National Guard units on active duty, the National Guard Bureau ceased to exist as a special staff and came under the authority of

the Army's Adjutant General and by the end of the war consisted of forty-nine civilians under the control of the Personnel Division of the Army Service Forces.<sup>80</sup>

Before the war ended, plans were made to determine how the National Guard would fit into the federal system post-war. It was determined that the National Guard would always be the first line reserve after the war, and that the Guard strength be maintained so that it, combined with the regular forces, would form a balanced force capable of immediate deployment anywhere in the world. It was also determined that the Guard's position on the General Staff be expanded and that at least one guardsman always be on the staff. With these recommendations, and the publication of War Department Circular 347, which recommended that the Regular Army be reinforced "by organized units drawn from the citizen army reserve, effectively organized for this purpose in time of peace" the National Guard would not be threatened by the actions similar to those taken after World War I.

Once again, the United States proved its concept that a small standing Army which posed no threat to the citizenry, in coordination with a large reserve force, could simultaneously defend the country and successfully conduct military operations overseas. Unfortunately, the end of World War II did not bring with it the same peace that the end of the previous conflicts brought. The new world order required the maintenance of an army overseas and the ability to simultaneously defend the homeland and rapidly push large concentrations of troops to Europe or Asia. These new requirements would directly affect the National Guard.

Despite the end of the war, Congress extended the wartime draft act, which went into effect on 24 June 1946. This extension, which left members of the National Guard exempt, coincided with an increase in enlistments into the National Guard. Incentives for Guard membership were also included in the legislation which instituted the draft in 1948. These provisions helped drive National Guard enrollment to an all time high.

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<sup>80</sup>Ibid., 203.

Even with the increased number of guardsmen, there was still political friction. The creation of the Air Force prompted the separation of the National Guard into two separate organizations, the Air National Guard and the Army National Guard. Questions about the Air National Guard's ability to support the Air Force with its training deficiencies and the diluted chain of command created by the National Guard Bureau, the governors, and the Air Force hampered its inclusion into the Air Force system. On the Army side, the National Guard friction coincided with the entry of American Forces into Korea. With the military assuming that the attack on South Korea was a diversion by the Russians in order to allow an attack into Europe, the Joint Chiefs of Staff limited the mobilization of Army National Guard units. Instead, they chose to activate individuals from guard units for twenty-one months of federal service. The guard was also required to give up vehicles, tanks, and artillery to the active units. This was seen by some senior National Guard leaders as another attempt by the active component to create an argument for the disbanding of the National Guard. If units were mobilized to fight in Korea or Europe, they would have lost their experienced personnel to the individual activations and their equipment to the active component, thereby making them ineffective when they reported to mobilization stations. This ineffectiveness could then be used to show that, despite the additional federal funding and the increased numbers, the National Guard was unable to meet its commitments. These issues were addressed in the *Armed Forces Reserve Act*, which included provisions which reaffirmed that the National Guard would be ordered into federal service ahead of the other reserves, directed the military to order the Guard into service as units with the ability to move personnel between units once activated, created the Ready Reserve which included units and individuals of the National Guard as well as everyone with an unfilled reserve obligation, created the Standby Reserve and Retired Reserve, and gave the military departments permission

to order any person in the National Guard into federal service for up to fifteen days a year once the governor had given consent.<sup>81</sup>

The increase in Soviet missile and bombing capabilities brought the National Guard into a role similar to the coastal artillery service in 1907. In 1951, the Army created the Army Air Defense Command (ARADCOM), which would provide perimeter air defense in the northeastern United States and point defense in key areas in the Midwest and the West coast. Anti-aircraft battalions assigned to the air defense plans were designated as the “Special Security Force.” The ARADCOM plan called for ninety Army National Guard anti-aircraft units to serve within the continental United States. Eventually, 105 Army National Guard anti-aircraft batteries served in the Special Security Force.<sup>82</sup> This mission was different from the 1907 mission because of the legislative changes that had taken effect between 1953 when National Guard anti-aircraft battalions began moving toward the defense mission and the 1907 coastal defense. For the ARADCOM mission, the anti-aircraft units would be placed in state active duty and would be instantly placed on federal active duty whenever an air threat appeared. As technology advanced, the anti-aircraft batteries went from guns to missiles, requiring additional resources and personnel for support. By the time that the ARADCOM mission ended in the 1970s, the National Guard had established itself as an asset which was fully capable of participating as a first line of defense against international threats to the nation; as a force which could integrate highly technical weapons systems into its inventory, and as a force which could complete the same missions as the active component at a significant cost savings.<sup>83</sup>

The turbulence of the 1950s and 1960s also required the National Guard provide military support to civil authorities. In Tennessee and Kentucky, the National Guard was used to enforce segregation laws, while in Arkansas, the governor attempted to use the National Guard to prevent

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<sup>81</sup>Mahon, 211-212.

<sup>82</sup>Doubler, *Civilian in Peace, Soldier in War*, 241.

<sup>83</sup>*Ibid.*, 243.

school integration. This was countered by President Eisenhower ordering the entire Arkansas National Guard to federal service, thereby removing command from the governor and placing it under the President. Later President Kennedy would use the same tactic to remove control of the Alabama National Guard from Governor Wallace and place it under federal control. Student revolts and race riots also necessitated the use of the National Guard in several states. As always, the widespread use of the National Guard allowed for scrutiny of the National Guard by the federal government, this time by the National Advisory Commission on Civil Disorders. While the states had been pleased with the National Guard's service, the commission found that the units had been deficient in riot control techniques. This criticism resulted in additional mandatory training in crowd control and urban combat for the National Guard, a requirement which still exists today. The recommendations also allowed the National Guard to receive new equipment specific to riot control operations.

Amidst these new federal and state missions, there were more attempts to streamline the reserve system, this time by Secretary of Defense Robert McNamara. The first change from the Defense Department was an attempt to increase reserve readiness by reducing force structure. Historically, the National Guard had required almost twice as many Soldiers as it had been authorized, requiring a significant infusion of new Soldiers during mobilizations. McNamara reduced this difference by deactivating four divisions and replacing them with four brigades.

McNamara also conducted a reorganization of the Guard and Reserve within the Department of Defense, moving combat and combat support units to the National Guard and combat service support units to the Army Reserve. Given the violence of the time, governors demanded that they retain military police, medical, and transportation units in their Guard organizations to support state riot control missions. By the end of the McNamara consolidations, the Guard consisted of eight divisions and several separate non-divisional units.

During the Vietnam War, the Army decided not to mobilize the National Guard, but to rely on draftees to increase and maintain the size of the Army. The increased number of troops in

Vietnam required the military to fight in Asia and maintain security in Europe simultaneously. In order to meet this commitment, the Selective Reserve Force (SRF) was created. This force consisted of National Guard and Reserve Soldiers who could act as a strategic reserve for threats to Korea and Europe. The units would be able to mobilize within seven days of an alert at 98 percent strength and deploy overseas with minimum post-deployment training.<sup>84</sup> These new units required additional unit training time and often took equipment and personnel from the same state's non SRF units, at times creating funding and training problems for the donor units. While the units were considered a success, they were terminated in 1969 because of their additional cost and the perception that they would not be needed.

President Johnson's hopes that the National Guard would not have to be mobilized for service in Vietnam died in 1968 with the attack on the USS *Pueblo* and the Tet Offensive. On 13 May 1968, 13,633 National Guard Soldiers reported to their armories on active duty, with 2,729 serving in Vietnam.<sup>85</sup> Again, the National Guard was able to support homeland defense by providing forces for military missions overseas while conducting support to civil authorities in the United States.

The post-Vietnam era brought with it a shift of focus in the National Guard from supporting law enforcement in civil disturbances back to being an integral part of the strategic reserve. As the draft became politically untenable, the ability for the military to rely on conscripts to maintain its strength ended. Additionally, the American public demanded reductions in military spending and reductions in forces. This meant an increased reliance on the reserve components to maintain total military strength. This new requirement manifested itself in the Total Force Policy.

The Total Force Policy proposed that the Army National Guard and Army Reserve were the primary source of additional manpower, and that the Army was now one Army consisting equally of the Regular Army, the Army National Guard, and the Army Reserve. This policy

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<sup>84</sup>Ibid., 257.

<sup>85</sup>Ibid., 260.



highlighted several implicit features of the nation's defense posture: the United States can not successfully mount a significant military operation without the Guard and Reserve; constraints on military budgets require that a large portion of military strength reside in the Guard and Reserve; members of the Guard and Reserve possess professional military skills comparable to their active counterparts; and it provided the practical response that this reliance will require reserve components who are trained and equipped at levels comparable to the units which they will augment.<sup>86</sup>

An effect of the Total Force Concept was linking specific National Guard units to Regular Army units in case of mobilization through the CAPSTONE program. If there were a presidential mobilization, each National Guard unit knew when it would go and with whom it would work, thereby allowing a training affiliation to be established between the active and guard units. The Total Force Concept also allowed for the creation of National Guard roundout units. These units were similar to the SRP units of the 1960s. Individual National Guard brigades were assigned to active divisions as their third brigade if the divisions were called for service. These National Guard brigades established habitual training relationships with the divisions, received the same equipment as the divisions which they rounded out, and were provided extra money and training time in order to meet the additional requirements of having to mobilize and deploy more quickly than traditional National Guard units. The CAPSTONE program would ensure that the National Guard would be able to provide integrated forces for military missions overseas.

The additional responsibilities for the National Guard under the Total Force Concept also increased their participation in training exercises and missions outside of the United States. From being an organization that was focused on domestic operations in the 1960s National Guard units became instrumental in training exercises such as REFORGER in the 1970s and eventually in support operations for countries across the world in the 1980s. This new dependence on the

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<sup>86</sup>Wilson, 47.

National Guard, particularly in Central America during the Reagan presidency, put the National Guard in-between governors who did not support the Reagan administration and the National Security Council. Governors claimed that the deployment of National Guard troops violated the state's right to determine their use, and the federal government maintained that the states did not have the right to prevent troops from deploying. The situation was resolved by a Supreme Court ruling allowing the federal government to deploy National Guard troops, guaranteeing their ability to conduct military missions overseas.

The next test for the National Guard came with Iraq's invasion of Kuwait in 1990. In this instance the National Guard maintained its position as a strategic reserve for international conflict. By the start of the First Iraq War, the Army National Guard consisted of 10 divisions, 6 Roundout brigades, 14 separate brigades, 2 armored cavalry regiments, and 2 Special Forces groups.<sup>87</sup> With the attack on Kuwait by the Iraqis, and the threat of the invasion spreading into Saudi Arabia, the American military began sending troops to support what would be called Desert Shield. The expectations that came with the end of the Cold War triggered planning at the federal level for major cuts and reorganizations in the Army National Guard. The new problems in the Middle East halted those plans. In August 1990, President Bush authorized the Department of Defense to begin reserve component mobilization. For the Army reserve components, this mobilization specifically allowed only for the mobilization of combat support and combat service and support units. This decision would have unintended political and historical consequences. The Army divisions which had National Guard roundout brigades were forced to fill the gaps with Regular Army separate brigades, failing to test the roundout concept and giving those in the National Guard the impression that the Regular force was again looking for a way to marginalize the National Guard. As had been done before, the units were federalized incrementally to ensure mobilization centers were not overloaded with newly mobilized reserve units. In addition to units

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<sup>87</sup>Doubler, *Civilian in Peace, Soldier in War*, 303.

that deployed into the combat zone, there were eighty-five National Guard units who were brought onto active duty and remained within the United States to support mobilization and backfill active duty units who deployed and sixteen units who deployed to Europe to perform backfill missions.<sup>88</sup>

Immediately after Desert Storm, the planned reduction and reorganization in forces began. In 1993, the Army was realigned around functional lines, making the National Guard responsible for reserve combat units. Despite these cuts, the National Guard participated in several domestic incidents in the 1990s. These included duty by the California National Guard during the Los Angeles riots, hurricane relief in Florida, Guam, and Hawaii, and flood relief along the Mississippi River. Simultaneously, the National Guard became an integral part of the active component's plans for peacekeeping and humanitarian missions. Guardsmen were commonly seen in locations such as Honduras, Nicaragua, the Sinai, Haiti, and the former Yugoslavia. The National Guard in the 1990s allowed the Army to use its active component Soldiers to participate in high tempo locations until they could be transferred to National Guard control once the situation had stabilized, giving the Army the flexibility to react quickly to developing situations without committing a large amount of its active force to long term low intensity operations.

From its inception to the beginning of the twenty-first century, the National Guard has run the spectrum from the primary defensive force for the country to its strategic reserve. It served as the front line force in homeland security in conflicts ranging from attacks on settlers by Indians to securing the Mexican border during Pancho Villa's raids. The National Guard served to increase the numbers of trained and equipped Soldiers during all of America's major conflicts. Both by culture and necessity, the National Guard moved from being a loose confederation of

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<sup>88</sup>Ibid., 312.

local militias to an integral part of the Army's triad, required for the successful completion of any major mission.

## **The National Guard in Post 11 September Operations**

The attacks on 11 September 2001, again brought the National Guard into the consciousness of the American Public. The events of that day required the mobilization of National Guard units for both homeland security operations and supporting the active component in operations directly against terrorist organizations outside of the country.

The first missions the National Guard performed after the 11 September attacks were the almost immediate mobilization to protect critical infrastructure and provide force protection. With little notice, National Guard Soldiers were called to secure state offices and National Guard armories and training sites. Within days, guardsmen were providing force protection and securing critical infrastructure, to include nuclear power plants, water supplies, bridges, tunnels, border security sites, and military bases.

The National Guard also became an integral part in airport security soon after the attacks. The use of aircraft that departed from large domestic airports in the attacks heightened the awareness that airport security was not effective and that a similar attack could take place unless airport security was enhanced. The President ordered the National Guard to assume an airport security mission following the attacks. Because of the unique dual nature of the National Guard, guardsmen were able to work with and directly support the local law enforcement agencies at the airport without the legal ramifications of using federal troops.

Once military operations began in Afghanistan, the Total Force Policy required the mobilization of National Guard units to support the active component organizations deploying to Operation Enduring Freedom. These units filled the roll envisioned by military planners as the strategic reserve for the active forces, a role that the National Guard had been used in during Desert Storm and other conflicts. As the operations moved into Iraq and the requirement for

additional National Guard units for longer periods of time became evident, questions arose as to the best use of the National Guard, either as a primarily homeland organization, or an operational reserve of the active component.

## **Status of Service**

While most people are aware of the types of missions performed by the National Guard, most are not aware of the differences in duty status that the National Guard operates under, or the restrictions and implications of these statuses. In some instances, these differences are minor, but in others, there are important legal and financial ramifications depending on whether or not National Guard members operate under state or federal control. The service statuses of importance are state active duty, duty under Title 32 of the US Code, and duty under Title 10 of the US Code. While the National Guard can operate under another status, such as active duty for training and inactive duty for training, these are not used for operations supporting homeland security.

Typically, when the National Guard is initially mobilized, it is under state active duty. Under this status, the mobilized guardsmen are considered state employees and operate under the command and control of the governor and the state adjutant general. Soldiers mobilized under state active duty are paid according to state law, which does not necessarily align with the pay scales established by the federal government for pay grade and time in service. Guardsmen operating under state active duty are also not eligible for protection under federal law that is granted active component Soldiers, to include insurance and employment protection. Soldiers on state active duty also do not come under the control of the Uniform Code of Military Justice (UCMJ), the legal system for the military. Instead, these Soldiers operate under state law, which typically will mirror the UCMJ for infractions considered military in nature, such as the failure to obey a direct order. All of the Soldiers' pay and benefits are under the control of the state, which may or may not follow federal guidelines. The state is not reimbursed by the federal government

for the cost associated with mobilizing Soldiers under state active duty, giving the federal government no control over Soldiers operating under this status. This allows Soldiers on state active duty to directly support state and local governments without legal limitations, such as those under the *Posse Comitatus Act*. Mobilization under state active duty was done immediately after the 11 September attacks, but became problematic after a long period of time, when state budgets became strained with the increased expenses of the additional unbudgeted employees. It has since been determined that a long term mobilization under state active duty is untenable, and mobilizations for more than a few days should be done under Title 32 of the US Code.

Members and organizations of the National Guard can be brought onto active duty under Title 32, USC, subsection 502(f) under certain circumstances, to include homeland defense activities. 32 § 901 defines a homeland defense activity as an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.<sup>89</sup> Under Title 32, National Guardsmen may be ordered to perform training or other duty in addition to annual training or inactive duty for training. This status allows Soldiers to be paid under the federal pay scale approved by Congress and provides the legal and financial protections given to members of the active component. Governors must get the consent of the President or Secretary of Defense before ordering the National Guard onto Title 32 duty. While on duty in this status, guardsmen are paid from federal, not state funds, but remain under the control of the state government. This status allows Guardsmen to stay under state status, where the provisions of the *Posse Comitatus Act* restricting the involvement of federal forces in domestic law enforcement are not violated by Guard troops.

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<sup>89</sup>John D. Renaud, *National Guard Homeland Defense White Paper: September 11, 2001, Hurricane Katrina, and Beyond* (Arlington, VA: Army National Guard, 2005), 13.

The final status of duty for Guardsmen serving in homeland defense is under Title 10 of the US Code. Under Title 10, the National Guard is brought into active duty, or full time duty in the active component of the military. Under the provisions of Title 10, the President can federalize the National Guard to include individual voluntary orders to active duty, partial mobilization in time of national emergency for not more than twenty-four consecutive months, Presidential reserve call up for support to the active component for operational missions for not more than 270 days, federal aid for state governments for insurrection in any state against its government, the enforcement of federal authority when the President has considered that an unlawful obstruction, combination, assembly, or rebellion against the United States has taken place, or during invasion, rebellion, or the inability to execute federal law with active forces. Under Title 10, the control of the National Guard is taken away from the state and placed under the federal government. Those mobilized are given the same rights and pay as those in the active component, to include the legal restrictions placed on federal troops within the United States.

The National Guard can be mobilized for homeland security under three provisions. Each of these has positive and negative aspects which must be weighed against each other and compared to the desired outcome to determine how the National Guard should be mobilized.

## **The State Militias**

While there has been a focus on the National Guard for homeland defense, most states still maintain a militia under the militia laws. While these laws were determined to be insufficient for national defense in the early 1800s, they still allow states to maintain a military force that can not be mobilized or controlled by the federal government. These organizations typically are manned by former members of the state's National Guard who wish to maintain some connection with the state's military organization.

These organizations are at the disposal of the governor if necessary. While mobilized, they are paid as state employees and are not subject to the laws and restrictions placed on

mobilized guardsmen. Generally, the members are used to support mobilized guardsmen either in administrative actions or in maintaining the armories and equipment of mobilized or deployed National Guard units. Recently, Georgia used their state militia during the G-8 Summit Conference in Savannah in 2004. The level of dignitaries attending made the event a national special security event, requiring the use of police officers from the state and several local agencies, multiple federal law enforcement agencies, and military personnel operating under Title 10, Title 32, and state active duty. The administration of this vast collection of organizations was accomplished with the aid of the Georgia militia.

Of particular importance is the militia's ability to support homeland defense at the state level when the National Guard is not available. This has been an overlooked capability in many instances when the limited availability of the National Guard has been a concern to law makers.

## **Conclusion**

History has shown that the National Guard has been the primary force in protecting the homeland against invasion since the inception of the colonial militia in Massachusetts. The National Guard is one of the few uniformed forces which can operate outside of the limitations governing the active component forces as imposed by Title 10 of the US Code. It has a traditional working relationship with state and local governments, and it typically includes members of police forces, paramedics, fire departments, and others who have ties to the community in which they serve as National Guardsmen. The Army National Guard has over 3,000 armories strategically located throughout the United States which are closely linked to their local communities.<sup>90</sup> Legally, the National Guard is under the command of the governor of its state or territory until mobilized by the federal government. This gives the National Guard a specific, known chain of command that can increase its effectiveness and speed of deployability in

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<sup>90</sup>Heritage Foundation, The Role of the National Guard in Homeland Security, Washington, DC, 8 April 2002, Available from <http://www.heritage.org/Research/HomelandDefense/BG1532.cfm>; Internet; accessed on 23 April 2007.



response to pre- and post-terrorist attacks. This history and these capabilities have created a specific role for the National Guard in supporting homeland security.

## CHAPTER FOUR

# THE NATIONAL GUARD AND HOMELAND SECURITY

Homeland Defense is job number one--we 'Guard' the nation.

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### Introduction

As described in the Total Force Policy, the National Guard has become an integral force in America's military strategy. This strategy was developed under the idea that America's next battles would be on the fields in Europe and Asia fighting a conventional and well-known enemy. The only type of war that would affect the continental United States would be a nuclear exchange. Under these conditions, National Guard units would be a strategic reserve, ready to deploy to the battlefield after a mobilization and training period, where they would serve with active component units as they had done for centuries. With the fall of the Soviet Union and the unconventional attacks on New York and Washington, DC, the paradigm was shattered; the National Guard became part of the operational reserve, and defending the homeland moved from a secondary strategy of defense against ballistic missiles to a primary mission of the United States government.

With this substantial shift, the National Guard is poised to become the primary military instrument for homeland defense, but there are still questions as to where the National Guard falls in the government's hierarchy and how its obligations to the federal government and the state will best be balanced.

### The National Guard and the Department of Homeland Security

The creation of the Department of Homeland Security (DHS) split the responsibility for homeland security between the Department of Defense and the DHS. The new department became responsible for homeland security within the borders of the United States and its

territories, while the Department of Defense retained responsibility for projecting military power outside of the United States. While the DHS has the responsibility for protecting the United States, it is limited in its uniformed capabilities to the Coast Guard. The DHS is prohibited under the Homeland Security Act from directly controlling any military force, requiring that homeland security activities which fall under the control of the DHS but require traditional military operations must involve the Department of Defense. These restrictions and dependencies have created a seam which can delay military involvement in situations where DHS has the primary responsibility. This seam is one which can be exploited by terrorist organizations to increase confusion and lethality after an attack. Through the use of the National Guard, this requirement can be bypassed and this seam limited. In instances, where the DHS requires military support, there is the ability to work with the governors of the effected states and mobilize the National Guard under state control. These forces would remain under the control of the governors, either on state active duty or under Title 32. These forces would then be available to the DHS without the control of the Department of Defense. This scenario is currently being used in Operation Jump Start, where the National Guard is being used to supplement Border Patrol agents along the southwestern border.

There are organizations at the state level which mirror the federal DHS. These organizations report to the governors in much the same way as the DHS reports to the president. The purpose of these organizations is to provide a level of planning and response at the state level which can coordinate the state's assets in time of disaster or attack. At the state level, these organizations typically have a link to the state's National Guard headquarters, and, in many instances, the state's adjutant general is additionally the state's homeland security head. In many instances the state's National Guard has a key position in the homeland security organization. Either of these methods allows the state's homeland security office and military office to work directly to develop plans and relationships.

The National Incident Management System as published by the DHS does not specifically include a role for the National Guard, although there are roles that the National Guard could perform. The *National Response Plan (NRP)* does include the National Guard in considering defense support to civil authorities. The plan makes it clear that, unless the National Guard is federalized, it is operating in support of the governor and the state and is not part of the federal military response efforts.<sup>91</sup> The *NRP* also provides an outline for the hierarchy of the National Guard while integrating federal public safety and security capabilities and resources to support local and state authorities. The current policy states that the National Guard supports the governor and that a request for federal forces should be made only after the National Guard and other state authorities are unable to adequately respond to a civil disturbance or other serious law enforcement emergency.<sup>92</sup> This is the only reference the National Guard's role and capabilities in pertinent DHS documentation.

Although the state's National Guard is not a federal entity unless brought under the umbrella of title 10, pre-event coordination between states and the DHS must include the state's plan for the use of National Guard forces. There is currently a title 10 National Guard liaison officer between the National Guard and the DHS, but this officer would not have the ability to operate between all fifty-four states and territories and the DHS on a regular basis. This planning could establish decision points where the state's request for federal forces can be anticipated and how the federal forces will be integrated with the mobilized National Guard forces. These decision points would provide decision makers a pre-determined set of circumstances at which they must make a decision which is supported by existing contingency plans.

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<sup>91</sup>US Department of Homeland Security, *National Response Plan*, 42.

<sup>92</sup>*Ibid.*, ESF#13-2.

## **The National Guard and the Department of Defense**

The Department of Defense focus on homeland security is broad and consists of two distinct but interrelated mission areas, homeland defense and civil support. The Department of Defense views its primary mission as homeland defense. For this mission it will operate in support of a civilian led federal agency during a homeland security emergency. For this reason, the United States Northern Command (NORTHCOM) was established on 1 October 2002, with the mission of conducting operations to deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests within the assigned area of responsibility. In addition, when directed by the national command authority, it provides military assistance to civil authorities, including consequence management operations.<sup>93</sup> This conceptually places the NORTHCOM commander as the Department of Defense commander for overall command and control of support to civil authorities within his area of responsibility (AOR). However, his authority does not apply to National Guard forces operating under state control. It also does not apply to states and territories, such as Hawaii and Guam, who do not fall under the NORTHCOM AOR.

Given its particular mission, NORTHCOM consists of several separate subordinate organizations, to include the Joint Forces Headquarters-National Capitol Region (JFHQ-NCR), the Joint Task Force-Alaska (JTF-AK), the Joint Task Force-Civil Support (JTF-CS), Joint Task Force North, Standing Joint Force Headquarters-North (SJFHQ-N), and Army North. These organizations are particularly well suited for National Guard integration, and NORTHCOM has been able to integrate Title 10 National Guard officers into its staff. These integrated National Guard officers could be instrumental in missions requiring operations shared with Army National Guard (ARNG) and federal forces.

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<sup>93</sup>US Department of Defense, Joint Publication 3-26, II-7.

## National Guard Bureau and Homeland Defense

Both the *Strategy for Homeland Defense and Civil Support* and Joint Publication 3-26, *Homeland Security* support establishing an active layered defense in order to lead, support, and enable. While these documents focus on the capabilities of federal forces, the same framework can be used for the National Guard. The National Guard believes that it has several strengths which make it an effective homeland defense organization and has developed an emphasis on prevention, pre-event deterrence, and responding within ninety-six hours after a major incident. The National Guard Bureau (NGB) has identified four homeland defense roles that it can support beyond its traditional warfighting responsibilities: critical infrastructure protection; CBRNE response; prompt coordinated federal response; and homeland defense training.<sup>94</sup>

In order to support these four roles, the National Guard has initiated and expanded several organizations at the state level. State National Guard reorganization includes the following measures: (1) A move away from state area commands at each state to a joint forces headquarters at each state which can field a joint task force which can assume the tactical control of all military units and can integrate with other national level headquarters. (2) The establishment of twelve National Guard CBRNE Enhanced Response Force Package teams to provide a regional capability to respond within ninety-six hours to an event. (3) The development of the Full Spectrum Integrated Vulnerability Assessment (FSIVA) team concept, which will create training and coordination with civilian agencies to increase the responsiveness of National Guard forces. (4) The development of National Guard Reaction Forces (NGRF) which is a requirement that each state and territory maintain a battalion sized reaction force which can respond within four to eight hours of an event. (5) The establishment of a Joint CONUS Communications Support Environment (JCCSE), an unsecured collection of Department of Homeland Security systems at each joint forces headquarters designed to facilitate

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<sup>94</sup>Renaud, 8.

communications and coordination. (6) The establishment of at least one weapons of mass destruction-civil support team in each state and territory which provides personnel organized, trained, and equipped to enter CBRNE areas in a short period of time. (7) The establishment of aviation security and support battalions which can provide aviation assets to respond to homeland defense needs.

## Conclusion

While the National Guard considers itself to be in the best position to be the government's primary military homeland defense force, there are still problems in the existing military and civilian structure that prevent this. The National Guard will be under the control of governors unless it is federalized. This prevents NORTHCOM from planning for forces that might be required to complete its mission and requires a strong bond between the states, NGB, and NORTHCOM for contingency planning. The National Guard has no formal representation in the DHS, other than a liaison officer, limiting the ability of the National Guard and DHS to plan and coordinate contingencies. The NGB accomplishes the constitutionally mandated federal part in organizing, arming, disciplining, and governing the Guard and, by statute, is the channel by which the Army and Air Force communicate with the states and territories on all matters pertaining to the National Guard.<sup>95</sup> This structure limits the Guard's ability to operate at the strategic level with other federal organizations. NGB can produce policy and aid in the passage of legislation, such as the Emergency Management Assistance Compact, which can assist states in gaining additional National Guard forces, but does not have command and control authority over each state or territory's National Guard forces. This places the NGB in a position at the strategic level of attempting to allocate forces which it does not control.

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<sup>95</sup>Robert A. Preiss, "The National Guard and Homeland Defense," *Joint Force Quarterly*, no. 36 (December, 2004): 74.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Introduction**

The National Guard has the unique history and capabilities to serve at the primary homeland security force for the United States. After the attacks on 11 September and the events following Hurricane Katrina, the National Guard identified and corrected poor assumptions and mistakes, to include the development of the Joint Forces Headquarters concept at each state and the creation of federal exercises integrating National Guard, Department of Defense, and DHS. Despite these changes, there are still potential problems in making the National Guard the nation's preeminent military domestic response force.

Even with the changes since 11 September, there are questions as to exactly what the National Guard's role in homeland security should be and how it should be accomplished. The Commission on the National Guard and Reserves has been formed in part to answer the question, as have studies by scholars and academics. Using published studies, an historical background, and knowledge of capabilities, a possible solution for the role of the National Guard in homeland security will be examined in the context of the Department of Defense's contribution to homeland security: its military missions overseas, homeland defense, and support to civil authorities.<sup>96</sup>

### **Military Missions Overseas**

Historically, the National Guard has been heavily involved in overseas military missions. Volunteer and militia organizations served outside of the continental United States in the War of 1812, the Spanish-American War, World War I, World War II, Korea, Vietnam, and the wars in Iraq and Afghanistan. The National Guard has also served in overseas military missions in various peacekeeping and training roles. With the advent of the Total Force Policy, this

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<sup>96</sup>US Department of Defense, Joint Publication 3-26, I-3.



involvement became an operational imperative, requiring National Guard forces to support any long term deployment of American forces. During the initial establishment of the Department of Homeland Defense, there was a suggestion by Andrew Card that the National Guard be moved under the DHS and away from Department of Defense. This suggestion was untenable given the constitutional position of the National Guard. Since the National Guard is constitutionally bound to the Department of Defense, the National Guard will continue to serve in military missions overseas as it has historically.

There must be a level of awareness that the National Guard is essentially a zero sum organization, where forces used for military missions overseas are not available for service within the states or territories. This has somewhat been alleviated by the acceptance of the Emergency Management Assistance Compact, allowing other states without deployed troops to support domestic operations in states requiring assistance. NGB has also made a concerted effort to spread deployments throughout the states and limit the number of deployed National Guard units from individual states, thereby maintaining strength levels that can be used for domestic operations.

There is no foreseeable way for the National Guard to stop mobilizing to support military missions overseas, and it is definitely not in its best interests to do so. Historically the National Guard has fought the notion that the National Guard should be a strictly homeland defense organization and has insisted that the Guard was an integral component of the national military force.<sup>97</sup> The National Guard's dual role in homeland security, as well as supporting military missions overseas, will remain unchanged for the foreseeable future.

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<sup>97</sup>Mahon, 124.

## Homeland Defense

As seen above, homeland defense is the protection of the United States territory, sovereignty, domestic population, and critical infrastructure against external threats and aggression.<sup>98</sup> The *Strategy for Homeland Defense and Civil Support* suggests that the reserve components be employed in air and missile defense, land defense, CBRNE response, and critical infrastructure security.<sup>99</sup> Historically, this has been the major focus of the National Guard. In chapter 3, it was explained how the first European settlers to America formed military organizations from the populace to protect colonies. These organizations, through their various permutations, have conducted homeland defense in the protection against Indian attacks, service in the Civil War, and protecting the national border during the Army's expeditions into Mexico in search of Pancho Villa. During the Cold War, the National Guard had responsibility for air defense within the United States. After the 11 September attacks, the National Guard was mobilized to protect airports, military installations, the United States border, and critical and sensitive sites. The National Guard is currently conducting homeland security missions such as Operation Jump Start--its support to the United States Border Patrol along the Mexican border. Another National Guard homeland security mission is air defense in Colorado and Alaska.

Changes in the nature of warfare and the advent of terrorism have put the National Guard in a unique position regarding homeland defense. According to the *National Response Plan*, anti-terrorism response is coordinated through federal law enforcement agencies with the Department of Defense serving as a supporting agency, thereby placing terrorism in the criminal and law enforcement realm.<sup>100</sup> The unique nature of the National Guard allows it to perform law enforcement operations without the legal ramifications of using federal forces for law enforcement. These operations must be performed by the National Guard under the control of the

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<sup>98</sup>US Department of Defense, Joint Publication 3-26, I-4.

<sup>99</sup>US Department of Defense, *The Strategy for Homeland Defense and Civil Support*, 35-6.

<sup>100</sup>US Department of Homeland Security, *National Response Plan*, TER-1.

states in order to avoid Posse Comitatus restrictions. The National Guard in this status can give the government a trained military force which has the ability to conduct law enforcement operations, providing additional flexibility.

Since the National Guard has been routinely used as a homeland defense force, it has acquired professional skills and a legal standard for these operations. In order to support its homeland defense mission, the National Guard has created civil support teams in each state and territory, refined its ability to move troops between states while allowing them to perform law enforcement missions, established liaison officers in the DHS, and established permanent Title 10 positions in NORTHCOM. It can be expected that the National Guard will continue to maintain this role.

## **Support to Civil Authorities**

The Department of Defense's role in the civil support mission area consists of support to United States civil authorities for domestic emergencies and for designated law enforcement within the scope of the restrictions required by the *Posse Comitatus Act* and other support approved by the Secretary of Defense.<sup>101</sup> Again, the National Guard has a unique legal and organizational ability to perform missions supporting civil authorities.

The National Guard considers performing military support to civil authorities (MSCA) a core competency at the unit level. Between the Civil War and the Spanish American War, National Guard units were called 481 times to support civil authorities, but the Guard leaders did not consider internal police work the only mission of the National Guard.<sup>102</sup> This tradition of support continued to supporting the victims of Hurricane Katrina. The National Guard was able to use the Emergency Management Assistance Compact (EMAC) to bring guardsmen from other states into the affected areas while keeping them under state control, thereby allowing them to

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<sup>101</sup>US Department of Defense, Joint Publication 3-26, I-4.

<sup>102</sup>Mahon, 118.

perform law enforcement operations that the Army Reserve and the active component were not allowed to perform. This put the forces mobilized under Title 10 in the situation of only being able to perform search and rescue missions, while the National Guard operated as de facto law enforcement in many areas.

The relationship between the Guard as an organization, the individual guardsmen, and law enforcement is also unique in the military. Because the Guard is a state entity, there is usually a close relationship between National Guard officers and the state law enforcement officials in planning at the state level. Police officers also tend to migrate either from or to the military, and the Guard has a large number of police officers serving as traditional guardsmen. This duality establishes a working relationship between Guard units and police departments that can not be duplicated by federal troops.

Local National Guard units are particularly well-suited for civil-support missions because they are “forward deployed” in about 3,000 communities across the United States, are readily available for use in either state active-duty status or Title 32 status, routinely exercise with state and local first responders, and have experience mobilizing for local disaster relief missions.<sup>103</sup> Because of the unique legal and organizational attributes of the Guard, it will continue to serve an important role in MSCA, and should be considered the primary Department of Defense organization for domestic MSCA. However, MSCA should not be the only mission of the Guard, as its capabilities and missions go far beyond the MSCA role.

## **Operational Construct**

Currently, the basic assumption that the National Guard will continue to support homeland security by supporting military missions overseas remains valid. However, the role of

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<sup>103</sup>Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared* (Washington, DC: Government Printing Office, 2006), 467.

the National Guard in homeland security leaves much room for expansion, clarification, and integration with federal and state agencies.

In this area, the National Guard has both long term and immediate need missions. Long term missions include air defense security in Alaska and Colorado and missions supporting the Border Patrol along the Mexican border. Immediate need missions include airport security missions and security at other critical infrastructure sites as was seen after the September 11 attack. Long term missions can be planned in advance with forces and equipment assigned and dedicated before execution. Immediate missions typically start from a unit alert with little or no preparation time with the first National Guard forces either the National Guard Reaction Forces or the WMD-CST, both of which are trained and prepared to respond on short notice. Immediate missions can evolve into long term missions, as was the case in securing military facilities after 11 September.

Currently, a request for National Guard forces for homeland defense can either be generated by the federal government or the state's governor. If the National Guard is to be federalized, the request must be authorized by the president or Secretary of Defense. After the failed terror plot in England, the Massachusetts governor activated members of the Massachusetts National Guard's military police battalion to assist at Boston's Logan airport. The guardsmen remained on state active duty and the federal government was not involved. In the case of Operation Jump Start, the National Guard support was requested by the federal government, and manning considerations were completed by NGB. States provided soldiers in an annual training status, where the soldiers are paid by the federal government, but remain under control of their states.

The National Guard's recommend operational structure for homeland defense considers both state and federal support. When the National Guard is required at the state level, it remains under the control of the governor. In the case that additional assistance required is, the states should use the existing structure under the EMAC to request troops from other states and

coordinate through NGB. This allows the National Guard forces to conduct operations without violating the *Posse Comitatus Act*. If the request comes from the federal level without the required integration of federal military forces, the effort should be coordinated between the requesting organization and NGB with the guardsmen operating in other than a Title 10 status. Since NGB has no direct command authority over troops, a headquarters element will have to be established which is also not a Title 10 organization. This headquarters organization should be controlled by a National Guard officer from the affected state. The natural existing element for command and control in this instance is the state's Joint Forces Headquarters. If the homeland defense response requires the integration of Title 10 forces, to include Reserve forces, with National Guard forces, every effort should be made to keep the guardsmen in a status other than Title 10. This will increase their effectiveness and capabilities in operations illegal for federal forces to conduct. The "dual hatted" command, as used in the Sea Island Summit in Georgia and the 2004 Democratic and Republican conventions, is recommended, where a National Guard general officer is placed in command of both Title 10 and non-Title 10 forces simultaneously, thereby eliminating the legal concerns of a Title 10 officer commanding troops which are not federalized.

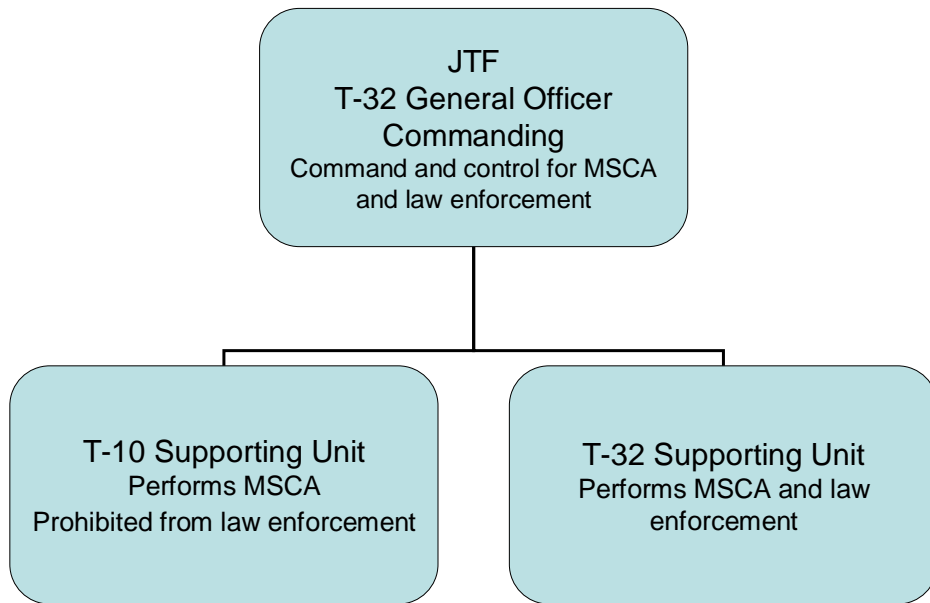


Figure 3. Proposed Command and Control Structure for Active Component Support

Similarly, support to civilian authorities can be accomplished along the same construct. The most recent and best known military support to civilian authorities occurred in the aftermath of Hurricane Katrina. This event is particularly important because it required interaction between the Department of Defense, the DHS, NGB, and the affected states. The current construct assumes that the National Guard, while in state status, is normally the first military responder to civil support incidents which require the resources beyond the capabilities of local and other state level emergency response organizations.<sup>104</sup> If additional forces are required, the EMAC can be instituted, providing additional military forces from outside of the state which can still conduct law enforcement operations. Katrina highlighted problems existing between NORTHCOM, Department of Defense, NGB, and the state National Guard units. While JTF-Katrina was formed and controlled Title 10 forces in the affected areas, it had no command and control authority over

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<sup>104</sup>US Department of Defense, Joint Publication 3-26, II-13.

National Guard forces operating in the same areas. The deployments of the National Guard troops were not well coordinated with the active-duty forces resulting in local, state, and federal officials having differing perceptions of the numbers of federal troops that would be arriving, the missions they would be performing, who was in command of the military forces, and who should be in command.<sup>105</sup> In order to limit this confusion Legislation was passed in 2004 which provided governors the ability to field a Joint Task Force–State. This National Guard JTF can assume tactical control of a military force in Title 10, 32, or state active duty which is ordered to respond to a contingency operation or disaster.<sup>106</sup> The concept of this organization is that unity of command can now be maintained through the JTF without the legal conflicts of using a Title 10 command and control organization to control law enforcement conducted by Title 32 forces.

Using the new command and control construct, federal forces can be brought in and integrated with National Guard plans. These federal forces will still be restricted to performing search and rescue missions and, under the Stafford Act, will still only be available for ten days. The National Guard will remain the primary military support for civilian authorities. This construct will require that NORTHCOM coordinate through NGB with every state and territory in its AOR to establish a working relationship with the state organizations. It is recommended that National Guard forces remain outside of a Title 10 status whenever supporting civilian authorities.

If the President feels that actions can be taken under the Insurrection Act, then the legal ramifications of using Title 10 forces for law enforcement are no longer a consideration. Once Posse Comitatus has been lifted, civil support control should fall under NORTHCOM.

The special case for the National Guard is in the instance of a CBRNE event. Each state has established a Weapons of Mass Destruction - Civil Support Team (WMD-CST). The WMD-

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<sup>105</sup>Committee on Homeland Security and Governmental Affairs, *“Hurricane Katrina: A Nation Still Unprepared,”* 476.

<sup>106</sup>John H. Ebbighausen, “Unity of Command for Homeland Security: Title 32, Title 10, or a Combination” (Ph.D. diss., U.S. Army Command and General Staff College, 2006), 38.



CST's mission is to support civil authorities at a domestic CBRNE incident site by identifying CBRNE agents/substances, assessing current and projected consequences, advising on response measures, and assisting with appropriate requests for additional support.<sup>107</sup> When directed by the Secretary of Defense, the NORTHCOM commander deploys JTF-Civil Support (CS) to CBRNE incident sites, establishes C2 of designated Department of Defense forces, and provides MACA.<sup>108</sup> In the event of the deployment of JTF-CS, there must be some level of coordination between the JTF and the WMD-CST on site, and a legal command and control relationship must be established allowing the WMD-CST to perform law enforcement functions.

## **Congressional Recommendations**

Two reports, *Hurricane Katrina: A Nation Still Unprepared* and *Strengthening America's Defenses in the New Security Environment* have been published which provide recommendations to change the National Guard to better support homeland security. While some of these recommendations are problematic, some are viable and should be considered. Among these are the recommendations that there should be coordination between Department of Defense and the states to develop and integrated plan for National Guard deployment and that NORTHCOM and NGB should expand the presence of NGB at NORTHCOM and integrate NGB officers into NORTHCOM's planning, training, exercising, and response to an incident or disaster. The Commission on the National Guard and Reserves found that NGB and other elements of the Department of Defense are not properly structured to fully integrate the National Guard into domestic contingency planning, training, exercising, and operations.<sup>109</sup> It has recommended that in a new advisory role, the Chief of the National Guard Bureau should advise the United States

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<sup>107</sup>US Department of Defense, Joint Publication 3-26, II-13.

<sup>108</sup>*Ibid.*, II-8.

<sup>109</sup>Commission on the National Guard and Reserves, *Strengthening America's Defenses in the New Security Environment* (Washington, DC: Government Printing Office, 2007), xiv.

Northern Command Commander, the Secretaries of the Air Force and Army, and, through the Chairman of the Joint Chiefs of Staff, the Secretary of Defense on how to reduce gaps between federal and state emergency response capabilities. The Department of Defense (including combatant commands and NGB) and Department of Homeland Security Headquarters should exchange representatives; Congress should establish a bipartisan Council of Governors to meet and advise the Secretary of Defense, the Secretary of Homeland Security, and the White House Homeland Security Council on matters related to the National Guard and civil support missions; job descriptions for senior leaders and other key positions at NORTHCOM should contain the requirement of significant Reserve or National Guard experience or service; either the officer serving in the position of the commander or the officer serving in the position of deputy commander of NORTHCOM should be a National Guard or Reserve officer at all times; and NORTHCOM should develop plans for consequence management and support to civil authorities that account for state-level activities and incorporate the use of National Guard and Reserve forces as first military responders.

## **Conclusions**

The National Guard is the primary homeland security force in the United States. Historical and legal precedents have formed the National Guard in such a way that it should be the first military organization that responds to a homeland defense mission or to support civil authorities. In addition, it now also functions as an operational reserve for both the Army and Air Force.

Recent reports and events have indicated homeland security and the role of the National Guard are not fully integrated. In order to ensure homeland security for the United States, there must be very close cooperation between NGB, Department of Defense, and DHS. With minimal legal adjustments which identify a command and control organization which includes National Guard officers in specific situations, the National Guard can be an effective homeland security.

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